

Closing the Gaps in Compliance

Corrective Actions for Common Audit Findings

Audit Finding Guide

July 15, 2025

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Chapter 1: Introduction

This user guide presents a comprehensive overview of nine recurring compliance issues identified through DRPT's compliance reviews over the past few years. Drawing from real-world audit findings and grounded in regulatory requirements, this guide is designed to help Grantees strengthen their internal controls, enhance program compliance, and improve audit readiness.

Chapter 2: Methodology



Our compliance review process relies on three main sources

1. **DRPT's Master Agreement:** Defines the terms and conditions for grants funded by the Commonwealth of Virginia.
2. **DRPT's Grant Administration Procedures (Purple Book):** Outlines the procedures Grantees should follow to manage state and federal grants effectively, available at <https://drpt.virginia.gov/guidelines-and-requirements/public-transportation-grant-administration/>
3. **FTA Contractor Manual:** Covers expectations for recipient management and compliance with federal regulations, available at <https://www.transit.dot.gov/regulations-and-programs/program-oversight/fy25-comprehensive-review-contractors-manual>

Note: During compliance reviews, DRPT evaluates whether Grantees are meeting the requirements outlined in these governing documents.

Chapter 3: Common Audit Findings

Section 3.1 – Vehicle Inventory

1. Requirements:

- a. To ensure proper oversight of capital assets, the FTA provides a clear understanding of how Grantees manage, use, and dispose of assets. As such, Grantees must maintain accurate and complete equipment records, including
 - i. Property location/physical address
 - ii. Use and condition of property
 - iii. Summary of conditions on the title
 - iv. Brief description of improvements, expansions, and retrofits
 - v. Corresponding useful life for the assets
 - vi. Date placed in service
 - vii. Original acquisition/purchase cost
 - viii. Sources of funding
 - ix. Federal and non-Federal participation ratios
 - x. Federal Award Information Number
 - xi. Appraised value and date
 - xii. Anticipated disposition or action proposed
 - xiii. Date of disposal
 - xiv. Sale price
 - xv. Reason for excess property
- b. All the elements mentioned above should be maintained in the Grantee's internal vehicle records. Maintaining complete internal asset records is the best practice to ensure accurate vehicle records.
- c. Grantees that only receive state funding are not required to maintain the elements pertaining to Federal funding (ix and x) above in their asset records.
- d. All recipients of state capital assistance funding are required to enter asset inventory information in DRPT's online transportation asset management system, TransAM. This includes all state-funded vehicles and non-revenue vehicles (such as support vehicles) once they are placed in service.
- e. Odometer readings must be updated twice annually — on July 15 and January 15 — to help track vehicle usage and condition over time.

2. Examples of Audit Findings:

- a. Vehicle Identification Numbers (VINs), purchase costs, and in-service dates recorded in TransAM did not match the Grantee's internal vehicle inventory records.
 - i. Table 1 shows that there are several discrepancies between VINs in the Grantee's vehicle inventory records and TransAM.

Table 1. Vehicle VIN Discrepancies

Vehicle #	TransAM VIN	VIN in Vehicle Records	Correct VIN
703	15GGV2712D1182506	15GGB2712D1182506	15GGB2712D1182506
763	1HAGGUBB1LN003679	1HA6GUBB1LN003679	1HA6GUBB1LN003679
829	1HA6GUB71MN_12184	1HA6GUB71MN012184	1HA6GUB71MN012184
708	1FM5K8B83EGC02438	1FMEK8B83EGC02438	1FM5K8B83EGC02438

- ii. Table 2 shows significant differences in purchase costs between the two sources.

Table 2. Purchase Cost Discrepancies

Vehicle Number	VIN #	Purchase Cost in TransAM	Purchase Cost in Vehicle Records	Difference
837	3FMCR9B69PRD13479	\$34,900	\$42,297	(\$7,397)
838	3FMCR9B62PRD56545	\$34,900	\$42,297	(\$7,397)
839	3FMCR9B69PRE02596	\$34,900	\$42,297	(\$7,397)

- iii. In Table 3, the in-service dates recorded in TransAM do not match those in the internal records and require further investigation.

Table 3. In-Service Date Discrepancies

Vehicle #	VIN	TransAM In-Service Date	In-Service Date in Vehicle Records	Discrepancy (Days)
675	1GB6G5BG7C1119616	1/31/2012	2/17/2012	(17)
726	4UZADEDU5GCHJ7567	10/19/2015	9/18/2015	31
750	1HA6GUBB1JN008152	6/8/2019	4/25/2019	44

- b. These discrepancies cause confusion and make it difficult to accurately track vehicles. Discrepancies can arise from similarities in VINs, quoted costs versus invoice costs, and acquisition dates versus in-service dates. Also, asset records are not regularly reconciled.

3. Corrective Actions:

- a. Assign one employee for data entry and another employee to review and verify the accuracy of the information entered into both the internal records and TransAM. This review and verification process helps catch errors early before they are identified in compliance reviews.
- b. Perform quarterly data audits to verify the consistency of vehicle data across both systems. If discrepancies are found, investigate and correct them promptly.

Section 3.2 – Performance Data

1. Requirements:

- a. DRPT Grant Administration Procedures Section 7.1 General Requirements state that, to receive transit operating assistance, DRPT requires Grantees to report Unlinked Passenger Trips (UPT), Vehicle Revenue Hours (VRH) and Vehicle Revenue Miles (VRM) monthly for all modes operated in a performance data reporting SharePoint site.
- b. All performance metrics are reported by mode and are validated by DRPT Program Managers on an annual basis. Performance metrics are used in running the operating assistance formula as identified in DRPT's Grant Application Manual.

2. Examples of Audit Findings:

- a. There are large discrepancies between the performance data reported to DRPT and the National Transit Database (NTD), compared to the Grantee's performance data records. For instance, the table shows a significant difference in revenue miles.

Table 2. FY2023 Performance Data Comparison

Description	Passenger Trips	Revenue Hours	Revenue Miles
OLGA Data	1,566,535	146,360	3,284,916
Grantee's Source Documents	1,576,677	138,705	3,110,038
NTD Data	1,576,743	138,705	3,110,038
OLGA vs. Grantee	(10,142)	7,655	174,878
OLGA vs. NTD	(10,208)	7,655	174,878
Grantee vs. NTD	(66)	-	-

- b. Performance data discrepancies may be caused by timing differences in when data is gathered and reported, differences in automated passenger counters (APCs) or other systems, data system changes, multiple data sources, and so on.
- c. Note: DRPT reviews NTD performance data for comparison purposes only. Once NTD data is submitted, Grantees are not required to go back and update it.

3. Corrective Actions:

- a. Centralize all ridership and performance data in a single, organized location accessible to authorized personnel. This avoids confusion from multiple uncoordinated sources.
- b. Reconcile reported data with internal records monthly to identify and correct discrepancies early. Continue this reconciliation process a few months after year-end to ensure accuracy.
- c. Use basic data validation techniques, such as checking totals, identifying missing values, and flagging outliers, before submitting reports.
- d. Assign a second staff member to review all data reports before submission to catch errors or inconsistencies.
- e. Maintain a log of unusual events (i.e., a natural disaster), or other such service interruptions, which may impact performance data, and communicate this information to your DRPT Program Manager.

Section 3.3 – Multiple Project Reimbursement Requests in the Same Month

1. Requirements:

- a. Article 3, Section 3.2 of DRPT’s Master Agreement states that Grantees shall submit project reimbursement forms (i.e. claims) no more frequently than once per month per project.

2. Examples of Audit Findings:

- a. Some Grantees submitted two or more reimbursement requests for one project during the same month, which is against DRPT policy. This can cause confusion, generate questions around duplicate payments, and could delay processing.

Table 4. Project 42522-37 – Multiple Reimbursement Requests

Voucher Number	Grant Description	Amount	Reimbursement Request Date
2073815	5311 Operating	\$9,242	4/25/2022
2073816	5311 Operating	\$54	4/25/2022
2073836	5311 Operating	\$3,636	4/27/2022
2073839	5311 Operating	\$4,842	4/27/2022
2075586	5311 Operating	\$2,713	11/3/2022
2075588	5311 Operating	\$272	11/3/2022

3. Corrective Actions:

- a. Maintain a reimbursement submission log, which means tracking every reimbursement request by project and submission date in a centralized log or system.
- b. Implement a pre-submission check process, which means requiring staff to check the log before submitting a new reimbursement request to confirm no previous submission was made that month for the same project.
- c. Have the finance or grants management team review the log monthly to detect duplicate submissions and take corrective actions if necessary.
- d. Implement a structured tracking process that can effectively prevent duplicate reimbursement requests and enhance the efficiency of reimbursement management. In instances where a second reimbursement request within the same month is necessary, Grantees

should consult their DRPT Program Manager in advance, as multiple submissions may be pre-authorized under appropriate circumstances.

Section 3.4 – Record Retention

1. Requirements:

- a. Article 5, Section 5.1 of DRPT's Master Agreement states that the Grantee is required to maintain all books, accounting records, and any other documents supporting the Grantee's activities and costs for every Project Agreement.
- b. The Grantee shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made.
 - i. Note: The retention period coincides with the state fiscal year which ends June 30. Grantees with a different fiscal year end must maintain records for whatever length of time necessary to meet the required retention period.
- c. The Grantee shall maintain records pertaining to facilities for the Useful Life of the facility.
- d. The Grantee shall maintain records pertaining to land in perpetuity.
- e. The Grantee shall require contractors to similarly maintain their books, accounting records, and any other documents supporting the contractors' activities and costs incurred, and require contractors include a similar provision in their subcontractor agreements.

2. Examples of Audit Findings:

- a. Some Grantees do not have a formal records retention policy.
- b. In certain cases, the retention periods being followed are inconsistent with the requirements outlined in DRPT's Master Agreement, with Grantees using varying and non-compliant retention schedules (e.g. Library of Virginia Retention Schedules).
- c. Some Grantees indicated they relied on DRPT systems to retain project agreements. Grantees are required to retain records in internal files and not rely on DRPT systems to maintain records.

3. Corrective Actions:

- a. Establish and implement a formal record retention policy that aligns with DRPT's Master Agreement reference in Appendix A.
- b. Download and store all project agreements, applications, and other project records in the Grantee's own internal files instead of relying only on DRPT's systems. This ensures records are always available for audit or review.

Section 3.5 – Insurance Coverage

1. Requirements:

- a. Article 13, Section 13.2 of DRPT's Master Agreement states that insurance purchased by the Grantee, its agents, contractors, or subcontractors, shall list the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities as additional insureds.

2. Examples of Audit Findings:

- a. An "additional insured" is a person or entity that is covered under the policyholder's insurance for claims related to the policyholder's actions or operations.
- b. This is not the same as a "Loss Payee". Grantees are not required to include DRPT as Loss Payee for state and/or federal-funded assets.
- c. During the review of insurance documentation, it was observed that DRPT is not listed as an "additional insured".

3. Corrective Actions:

- a. Review all current insurance policies and ensure that The Department of Rail and Public Transportation, The Virginia Department of Transportation, officers, agents and employees of these two entities are listed as additional insureds.
- b. If the required coverage is not included, work with your insurance company to amend your insurance policies.

Section 3.6 – Vehicle Disposals

1. Requirements:

- a. Accurate vehicle disposal information is required to be entered into the DRPT TransAM system. This system allows DRPT to confirm that vehicles are being properly disposed of and ensures that any sale proceeds are managed in accordance with applicable regulations.
- b. If a vehicle is being disposed of before it reaches the end of its useful life, the Grantee should coordinate with their DRPT Program Manager to determine the appropriate next step.
- c. The following requirements only apply to transit agencies receiving pass-through FTA Section 5310 or 5311 funds received from DRPT.
 - i. Grantees must receive permission from DRPT before disposing of vehicles funded by state and/or pass-through FTA funding.
 - ii. As outlined in DRPT's Grant Administration Procedures, Section 12.4, for vehicles that have met their useful life, were purchased with Section 5311 funds or other federal assistance, and are no longer needed for transit purposes:
 1. If the vehicle is sold for \$10,000 or less, the subrecipient may retain the full proceeds.
 2. If the sale exceeds \$10,000, the subrecipient may retain \$5,000 plus the state and/or local share of the amount above \$10,000.
 3. Any remaining balance must be returned to DRPT who will forward the funds to the FTA.

2. Examples of Audit Findings:

- a. Discrepancies exist between the Grantee's internal records and TransAM regarding vehicle disposal status. Vehicles are marked as In Service in TransAM but disposed of in the Grantee's records.

Table 4. Vehicle Disposal Discrepancies

Vehicle #	TransAM Vehicle Status	Actual Vehicle Status	Disposal Date
5406 (250803)	Out of Service	Disposed	2/8/2022
5407 (250804)	Out of Service	Disposed	2/8/2022

- b. Vehicle's disposal date did not match TransAM and the Grantees's internal records.
- c. Disposal proceeds recorded in TransAM did not match supporting documents.
- d. Also, the federal share of disposal proceeds was not returned to DRPT for remittance to the FTA.

3. Corrective Actions:

- a. Assign responsibility to a staff number for data entry and verification in TransAM.
- b. Establish a deadline (e.g., within 5 business days of sale) for completing TransAM updates.
- c. Conduct periodic checks to correct any discrepancies between internal records and TransAM entries.
- d. For vehicles disposed above \$10,000, work with your DRPT Program Manager to determine the proper amount to be returned to the FTA.
- e. For agencies that receive pass-through federal funds, promptly remit to DRPT the FTA portion of vehicle disposal proceeds.

Section 3.7 – Vehicle Maintenance Issues

1. Requirements:

- a. FTA allows recipients discretion in determining the appropriate intervals for preventive maintenance inspections to accommodate such things as specific manufacturer recommendations, vehicle/vessel age, unique site and operating conditions, etc. FTA expects recipients to follow their program for preventive maintenance but understands that circumstances may prevent inspections being completed exactly at the interval specified.
- b. Recipients must have a written vehicle maintenance plan and a facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.
- c. Grantees that only receive state funds must also properly maintain assets to ensure proper running condition and vehicle safety.

2. Examples of Audit findings:

- a. Grantee's maintenance policy is vague and does not explicitly denote the intervals in which maintenance is performed
- b. Maintenance is performed outside of required timeframes (e.g. 5,000 miles between oil changes)

Table 4. Bus 03 Maintenance

Odometer Reading 1	Odometer Reading 2	Miles Between Inspections	Date PM Performed
17,485	25,964	8,479	12/27/2021
25,964	44,640	18,676	10/6/2022
44,640	50,537	5,897	1/24/2023
50,537	56,973	6,436	6/22/2023

3. Corrective Actions:

- a. Revise the written maintenance policy to include clear, defined vehicle maintenance intervals. Specify maintenance intervals for each vehicle type based on manufacturer guidelines.
- b. Develop a system to ensure vehicle maintenance is performed timely (i.e. within policy requirements).

- c. Set a quarterly internal review process to evaluate whether preventive maintenance is being completed on time and investigate any delays.

Section 3.8 – Travel Expenses

1. Requirements:

According to DRPT Grant Administration Procedures:

- a. DRPT will only reimburse travel expenses in accordance with and up to the state and federal approved rates for lodging, mileage and per diem amounts. The Commonwealth of Virginia uses the General Services Administration (GSA) rates for Lodging and Meals & Incidentals Expenses (M&IE), available at <https://www.gsa.gov/travel/plan-book/per-diem-rates> and the IRS mileage rate, available at <https://www.irs.gov/tax-professionals/standard-mileage-rates>.
- b. Reimbursement for meals is only valid when there is DRPT-approved overnight travel. Expenses for meals for same day trips are not eligible for reimbursement.
- c. Lodging expenses must follow GSA's lodging guidelines and rates and be reasonable and necessary. Rates above the GSA lodging rates as well as the taxes and fees associated with the higher rates will not be reimbursed.
- d. All claims must include legible supporting documentation that details the expenses charged to the project. Sufficient supporting documentation attached to claims is required to provide evidence and justification for every expense.

2. Examples of Audit Findings:

- a. Vouchers contained expenses for meals for same-day business trips
- b. Grantees submitted travel expenses that exceeded GSA lodging rates and DRPT expense guidelines (see table on the next page)

Description	Daily Charges	Number of Nights	Amount
Nightly Room Charge	\$104.88	1	\$104.88
GSA Approved Amount	\$96.00	1	\$96.00
Difference ⁽¹⁾	\$8.88	1	\$8.88
Nightly Tax	\$13.64	1	\$13.64
Tax Rate	13%		13%
Tax Calculated for GSA Rate	\$12.49	1	\$12.49
Difference in Taxes ⁽²⁾	\$1.15	1	\$1.15
Disallowed Travel ⁽¹⁺²⁾	\$10.03	1	\$10.03

3. Corrective Actions:

- a. Establish internal pre-travel review procedures to verify that planned lodging does not exceed GSA rates and only includes eligible costs
 - i. Use the official GSA website to validate allowable per diem and lodging limits before booking accommodations, available at <https://www.gsa.gov/travel/plan-book/per-diem-rates>.
 - ii. Grantees should not submit reimbursement claims for same-day business-travel meals.
- b. Require pre-approval from the DRPT Program Manager for all overnight travel, including travel purpose, lodging, meals, and other costs.
- c. DRPT has developed an Excel-based, fillable template to simplify estimating travel costs. Grantees interested in using the template should contact their DRPT Program Manager.
- d. Maintain open communication with the DRPT Program Manager for any travel-related questions prior to submitting expenses.

Section 3.9 – Ineligible Expense Reimbursement

1. Requirements:

- a. DRPT's Master Agreement states that Grantee's eligible project costs must be actual net costs charged to the Grantee (i.e., the price minus any refunds, rebates, salvage, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid).
- b. According to DRPT's Grant Administration Procedures, all claims must include legible supporting documentation that details the expenses charged to the project, demonstrates those expenses as germane to the project, shows the items produced or purchased through the project, and shows the work performed. Sufficient supporting documentation attached to claims is required to provide evidence and justification for every expense.
- c. DRPT's Master Agreement, section 6.4, states that the Grantee agrees if any audit finds payments by the Department were (1) unsupported by acceptable records, or (2) in violation of any other provisions of this Agreement or associated project Agreement, within 60 days of audit findings, the Grantee will promptly refund unsupported payments or payments found in violation.

2. Examples of Audit Findings:

- a. Expenses submitted multiple times for the same good or service resulting in a duplicate payment.
- b. Expenses that were paid to the incorrect project (e.g. capital project expense included in operating expenses).
- c. Expenses that were covered by another funding source.
- d. An expense where an invoice/receipt was not provided, and the appropriateness of the expense could not be validated.
- e. Invoices for goods/services that were rendered outside of the project period.
- f. Grantees requested reimbursement from DRPT for more than the amount shown in supporting documentation.

3. Corrective Actions:

- a. Require two different individuals (e.g., a preparer and a reviewer) verify

- i. All expenses are supported by itemized and legible documentation.
- ii. The expense was incurred within the approved project timeline.
- iii. The cost is charged to the correct project and funding source
- iv. If an expense has been or may be paid by another funding source, do not submit the expense for reimbursement.

Glossary

Acronym/Term	Definition/Explanation
DRPT	Department of Rail and Public Transportation.
FTA	Federal Transit Administration. Federal entity responsible for transit planning and programs under title 9 U.S.C.
GSA	The General Service Administration. An independent agency of the United States government that supports the management of basic government functions.
IRS	Internal Revenue Service. Body that determines mileage rates.
TransAM	DRPT's online transportation asset management systems. All recipients of state capital assistance funding are required to enter asset inventory information for vehicles and facilities/infrastructure.
UPT	Unlinked Passenger Trips. The number of passengers who board public transportation vehicles. Passengers are counted each time they board vehicles no matter how many vehicles they use to travel from their origin to their destination.
VRH	Vehicle Revenue Hours. The hours that vehicles actually travel while in revenue service.
VRM	Vehicle Revenue Miles. The miles that vehicles actually travel while in revenue service.

Appendix A

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

(Grantee Name)

This Master Agreement (“Agreement”), is made and executed as of the of the date of the last signature between the Virginia Department of Rail and Public Transportation (“Department”), acting by and through its Director, and _____ (“Grantee”) (collectively Department and Grantee referred to as “Parties”). On a case-by-case basis, the Parties will enter into a project specific agreement (“Project Agreement”) that includes the overall purpose for which grants are awarded (“Project”), the total cost of a Project, the Department and Grantee participation, Project time period, and any subsequent amendments thereto. This Agreement constitutes the terms and conditions governing receipt of grants provided by the Department and governs and is incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all actions such as executing a Project Agreement, requesting reimbursement, requesting extensions or other actions taken pursuant to complete a Project (“Grant Transactions”) from the date of this Agreement until a new Master Agreement for the use of Commonwealth transportation funds is executed by the Department and the Grantee. If there are any conflicting terms between this Master Agreement and a Project Agreement, the terms contained in this Master Agreement will control.

ARTICLE 1. PROGRAMS AND FUNDING

§ 1.1 This Agreement contains requirements that must be adhered to by the Grantee for all grants received from the Department.

§ 1.2 Funding is subject to annual appropriation by the Virginia General Assembly (“General Assembly”), allocation by the Commonwealth Transportation Board (“CTB”), and execution by the Parties of this Agreement and an associated Project Agreement. For any grants administered by the Department, the CTB or the General Assembly may change the percentage of the local share that can be financed by Commonwealth transportation funds to a higher or lower percentage than set forth in the Project Agreement. In the event such a change occurs, the applicable percentage will be the new

percentage set by the CTB or the General Assembly. All Eligible Project Costs incurred prior to the date of the change will be governed by the previous percentage.

§ 1.3 In the event that the Grantee receives a subsequent allocation of funding from the Commonwealth of Virginia (“Commonwealth”) other than the Department, or receives Federal funding for a Project, the allocation of grant funds originally allocated for that Project shall be reduced by the amount of the subsequent allocation of Commonwealth or Federal funding. Within thirty (30) days of receipt, the Grantee shall notify the Department in writing when a subsequent allocation of Commonwealth or Federal funding is received.

§ 1.4 The Grantee shall provide funds from sources other than Federal funds, except as may otherwise be authorized by Federal statute, in an amount sufficient, together with the grant funding governed by this Agreement, to assure payment of the total cost of the Project. The Grantee further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund and/or de-obligation to the Department of a proportional amount of the grant funds paid or to be paid by the Department. The Grantee is obligated to provide its share of Project cost as detailed in the Project Agreement.

§ 1.5 Payment of funds by the Department pursuant to a Project Agreement shall not exceed the Department funding amount identified in the applicable Project Agreement.

ARTICLE 2. ELIGIBLE PROJECT COSTS

§ 2.1 The Grantee agrees to incur costs in accordance with Project Agreements and this Agreement (“Eligible Project Costs”). The Department shall provide reimbursement of Eligible Project Costs submitted by the Grantee in proportion to the percentage of total funding to be provided by the Department pursuant to the Project Agreement. All expenses for which the Grantee seeks reimbursement by the Department shall be charged at the actual cost(s) to the Grantee with no Grantee markup.

§ 2.2 Eligible Project Costs must meet the following requirements:

- A. Be necessary in order to accomplish the Project as identified in an associated Project Agreement;
- B. Be reasonable for the goods or services purchased;
- C. Be actual net costs charged to the Grantee (i.e., the price paid minus any refunds, rebates, salvage, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid);
- D. Be incurred during the time period specified in the associated Project Agreement;
- E. Be in accordance with 2 C.F.R. Pt. 200 Subpart E, if applicable;
- F. Be based on a cost allocation plan that has been approved in advance by the Department if the costs are indirect costs;
- G. Be documented in accordance with the terms of this Agreement;
- H. Be treated uniformly and consistently under generally accepted accounting principles; and
- I. There must be sufficient remaining allocated Commonwealth transportation funds pursuant to the associated Project Agreement to make the requested reimbursement.

Costs incurred by the Grantee to correct deficiencies in a Project, including costs related to the Grantee's failure to comply with the terms of this Agreement or a Project Agreement, do not qualify as Eligible Project Cost. The Department shall make the final determination as to whether costs submitted for reimbursement qualify as Eligible Project Costs.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

§ 3.1 Some Projects involving operating costs will require payment based on a schedule. Payment schedules for such projects will be detailed in the Project Agreement. The Department will make payment to the Grantee of the Department's share of scheduled payments as outlined in the Project Agreement. For other Projects not subject to a schedule of payments, grant funds will be distributed by the Department to the Grantee on a reimbursement basis.

§ 3.2 The Grantee shall submit requests for reimbursement using the form ("Project Reimbursement Form") provided by the Department through the Department's grant administration system. The Grantee shall submit Project Reimbursement Forms no more frequently than once a month and within 90 days from incurrence of Eligible Project Costs. Project Reimbursement Forms must be supported by third party evidence. The Department shall have the right to request additional details. The Grantee shall provide information within 30 days of the Department's request for additional information. The Department will make reimbursement of approved Eligible Project Costs within 30 days of the Department's receipt and approval of Grantee's Project Reimbursement Form. The Grantee shall submit its final reimbursement request to the Department within 90 days of expiration of funding for the Project Agreement.

§ 3.3 The Department shall have the right, in its sole discretion, to withhold reimbursement for Project Reimbursement Forms or line items in Project Reimbursement Forms found to be incomplete or not in conformance with the requirements of this Agreement or the associated Project Agreement. The Department will notify the Grantee of the basis for withholding total or partial reimbursement and will work with the Grantee to resolve disputed items.

§ 3.4 Reimbursement by the Department is not a waiver of Department's claim that said reimbursement request violates this Agreement or Project Agreement. Reimbursement is not a final decision by the Department as to validity of the cost as an Eligible Project Cost.

§ 3.5 Any reimbursement paid to the Grantee by the Department not in accordance with the provisions of this Agreement, associated Project Agreement, or Federal, State, or local law, shall be repaid to the Department by the Grantee within 60 days of the Department's written notice to the Grantee of the repayment obligation.

§ 3.6 The Grantee is responsible for payment of all third-parties performing work on behalf of the Grantee ("Contractors"). The Grantee shall attach copies of Contractors' invoices to each Reimbursement request.

§ 3.7 The Grantee shall remit payment to Contractors within five business days of receipt of reimbursement from Department. If, for any reason, the Grantee does not remit payment to Contractor within five days, the Grantee shall immediately notify the Chief Financial Officer of the Department ("CFO") in writing, inform the CFO why such payments were not made and, if applicable, of the date Grantee will remit payment to its Contractors, and deposit the reimbursement funds received in an interest bearing account. The Grantee shall use all interest proceeds toward the Project, reducing the funding obligation of the Department outlined in the Project Agreement. Depending upon the Grantee's revised Contractor payment date, the Department may require the Grantee to repay the funds to the Department. If the Grantee fails to comply with this provision, the Department will require the Grantee to prepay Contractors prior to submitting Project Reimbursement Forms.

§ 3.8 With the exception of debt service specifically identified in a Project Agreement, the Grantee may not seek reimbursement for interest payments or charges on debt financing vehicles used to fund Projects.

ARTICLE 4. LAPSE OF FUNDS

§ 4.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period from the Project Start Date to the Project Expiration Date as identified in the Project Agreement. The

Department shall not provide any Reimbursement for any expenses incurred after the Project Expiration Date or for any expenses submitted 90 days after the Project Expiration Date.

§ 4.2 The Grantee's submission of a Project Reimbursement Form marked "Final," is Grantee's certification that it has completed the Project.

§ 4.3 The Department will withdraw any remaining Commonwealth transportation funds allocated for the Grantee's Project for which a final Project Reimbursement Form has been submitted and paid and/or after the Project Expiration Date. Withdrawn funds will be allocated to other projects.

ARTICLE 5. MAINTENANCE OF RECORDS

§ 5.1 The Grantee shall maintain all books, accounting records, and any other documents supporting the Grantee's activities and costs for every Project Agreement in accordance with federal and state laws and regulations. The Grantee shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made.

The Grantee shall maintain records pertaining to facilities for the Useful Life of the facility. The Grantee shall maintain records pertaining to land in perpetuity. The Grantee shall require Contractors to similarly maintain their books, accounting records, and any other documents supporting the Contractors' activities and costs incurred, and require Contractors contain a similar provision in their contracts with subcontractors.

ARTICLE 6. AUDIT AND INSPECTION OF RECORDS

§ 6.1 The Grantee and Contractors shall permit the authorized representatives of the Department to inspect and audit their records related to the performance of this Agreement. Acceptable records are original documents (such as timesheets, travel reimbursements, invoices, receipts, etc.) that are the basis of entries on the Payment Reimbursement Forms. The Department may require the Grantee to furnish certified reports of all expenditures under any contracts or subcontracts.

§ 6.2 If applicable, the Grantee must follow the requirements of 2 C.F.R. pt. 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”, including the audit and record keeping requirements set forth therein and applicable federal law. Grantees spending less than the statutory threshold amount of Federal assistance during any one fiscal year are not required to undergo a Single Audit, as defined by 31 U.S.C. § 7501, unless specifically requested by the Department. All Grantees must maintain auditable records and adequate supporting documentation. The Department reserves the right to require any recipient of Commonwealth funds to undergo an audit the scope of which will be defined by the Department and performed on any matter relating to a Project Agreement.

§ 6.3 If an independent Certified Public Accountant, other auditor, the Department, or any other party conducting an authorized audit finds the Grantee to be out of compliance with any provision of this Agreement, any Project Agreement, any relevant Federal, State, or local law or regulation, or applicable accounting standard or principle, the Grantee must provide a satisfactory corrective action plan to the Department within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

§ 6.4 The Grantee agrees if any audit finds payments by the Department were (1) unsupported by acceptable records, or (2) in violation of any other provisions of this Agreement or associated Project Agreement, within 60 days of audit findings, the Grantee will promptly refund unsupported payments or payments found in violation.

§ 6.5 The Grantee must submit audited financial statements to the Department within six months following the end of the Grantee’s fiscal year to WebGrants or other system designated by the Department.

§ 6.6 The Grantee shall include language consistent with this Article in its contracts with Contractors to provide the Department the same access to Contractors' books and records, and requiring the Contractors to include language consistent with this Article in all subcontracts.

ARTICLE 7. PROCUREMENT OF SERVICES

§ 7.1 If the Grantee is not subject to the Virginia Public Procurement Act, then the Grantee shall utilize, and require its Contractors to utilize, competitive processes as follows:

- .1 for procurement of professional services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive negotiation process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.2 and 2.2-4303.B of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of professional services can be found at §§ 2.2 and 3.1 of the most recent edition of the Commonwealth's Construction and Professional Services Manual ("CPSM");
- .2 for procurement of construction services, a nonprofessional service as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive bidding process acceptable to the Department that is similar to applicable portions of the process set forth in §§ 2.2-4302.1 and 2.2-4303.D of the *Code of Virginia* (1950), as amended. Additional information regarding procedures for procurement of construction services can be found at § 7.1 of the most recent edition of the CPSM; and
- .3 for procurement of nonprofessional services other than construction services as defined by § 2.2-4301 of the *Code of Virginia* (1950), as amended – a competitive sealed bidding or a competitive negotiation process acceptable to the Department that is similar to applicable portions of the processes set forth in §§ 2.2-4302.1, 2.2-4302.2, and 2.2-4303.C of the *Code of Virginia* (1950), as amended.

§ 7.2 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid. The Department also reserves the right to require that the Grantee not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to the Grantee's rights, duties, obligations, or responsibilities under this Agreement or any Project Agreement unless and until authorized to do so in writing by the Department.

ARTICLE 8. ASSIGNMENTS

§ 8.1 Assignment of any portion of this Agreement or of any Project Agreement must be preapproved by the Department in writing.

ARTICLE 9. TERM, ENTIRE AGREEMENT, AND AMENDMENT

§ 9.1 This Agreement shall be effective immediately upon its execution.

§ 9.2 This Agreement, and associated Project Agreements, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered therein. All 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.

§ 9.3 The execution of this Agreement and any associated Project Agreements may include electronic signatures using Personal Identification Number (PIN) based access.

§ 9.4 In order to effect a uniform set of terms governing Grant Transactions, effective as of the date of this Agreement, the Grantee and Department agree the terms of this Agreement supersede any and all previous Master Agreements previously entered between the parties. Any ongoing Project Agreements will be governed by the terms of this Agreement.

ARTICLE 10. NOTICES AND DESIGNATED REPRESENTATIVE

§ 10.1 All notices or communications with respect to this Agreement and associated Project Agreements shall be in writing and shall be deemed delivered (a) by hand, upon day of delivery, (b) by prepaid overnight delivery service, upon the next business day or (c) by U.S. Mail, certified, postage

prepaid, return receipt requested, on the third business day following mailing. All notices or communications with respect to this Agreement and associated Project shall be delivered to the addresses set forth below or such other addresses as may be specified by a party.

Designated
Representative:

Department:

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

Grantee:

NAME AND TITLE

ADDRESS

E-MAIL ADDRESS

ARTICLE 11. TERMINATION OF PROJECT AGREEMENT

§ 11.1 Grantee's Termination for Convenience. At any time, the Grantee may terminate a Project Agreement for its convenience by providing written notice to the Department. The termination will be effective 30 days after the Department's receipt of the Grantee's notice. Upon such termination, the Grantee will repay all funds received from the Department pursuant to the Project Agreement.

§ 11.2 Grantee's Termination for Cause

§ 11.2.1 The Grantee may terminate a Project Agreement for cause by providing written notice to the Department.

§ 11.2.2 The Department will have 90 days from receipt of the Grantee's notice, or such longer time as agreed by the Parties, to cure the breach ("Department's Cure Period"). If the breach remains uncured at the end of the Department's Cure Period, the termination shall be effective the day after expiration of the Department's Cure Period.

§ 11.2.3 If a Project Agreement is validly terminated pursuant to Section 11.2, the Grantee will not be required to repay funds disbursed by the Department and are confirmed as Eligible Project Costs by the Department's audit.

§ 11.3 Department's Termination for Convenience

§ 11.3.1 At any time, the Department may terminate a Project Agreement for its convenience by providing written notice of termination to the Grantee. Upon receipt of notice, the Grantee shall cease all Project work as soon as is practicable and refrain from entering into contracts in furtherance of the Project. The termination shall be effective 10 Days after the Grantee's receipt of the Department's notice.

§ 11.3.2 If the Department terminates a Project Agreement pursuant to Section 11.3, the Grantee will not be required to repay funds disbursed by the Department prior to the effective date of the termination that are confirmed Eligible Project Costs by the Department's audit. The Grantee may seek reimbursement for Eligible Project Costs for which it has not previously sought reimbursement incurred prior to the effective date of the termination.

§ 11.3.3 The Grantee waives all claims for damages and expenses related to a termination by the Department pursuant to Section 11.3.

§ 11.4 Department's Termination for Cause

§ 11.4.1 The Department may terminate a Project Agreement for cause by written notice to the Grantee upon the Grantee's breach, insolvency, or assignment for benefit of creditors.

§ 11.4.2 The Grantee shall have 30 Days from receipt of notice, or such longer time as agreed by the Parties, to cure or provide assurances acceptable to Department of solvency (“Grantee’s Cure Period”). If the breach remains uncured at the end of the Grantee’s Cure Period, the termination shall be effective the day after expiration of the Department’s Cure Period.

§ 11.4.3 If the Department terminates a Project Agreement for cause, the Grantee shall repay the Department all funds received pursuant to a Project Agreement, and shall not be entitled to further repayment. The Grantee shall make such payment within 60 days following effective day of termination.

ARTICLE 12: FORCE MAJEURE

§ 12.1 Force Majeure Event means fire, flood, war, rebellion, terrorism, riots, strikes, or acts of God, which may affect or prevent either Party from timely or properly performing its obligations under this Agreement.

§ 12.2 Delays caused by a Force Majeure Event shall not be deemed a breach or default under this Agreement. A Force Majeure Event will automatically result in a day-for-day extension to the performance period if any is specified in the Project Agreement. If the Department determines a Force Majeure Event renders Project Completion impossible or impractical, the Department may terminate the Project Agreement pursuant to Section 11.3.

§ 12.3 Within five days of occurrence, the Grantee will provide the Department written notice and documentation of the Force Majeure Event requesting relief necessary, and detailing required additional investigation, and analysis to determine extent of delay and remedy. Within 15 days of receipt of the Grantee’s submission, the Department shall review the submission and determine whether the Grantee is entitled to the requested relief. Within 30 days of the Department’s determination, the Grantee may appeal by requesting Director review. The Director’s written decision is final.

ARTICLE 13. LIABILITY AND INSURANCE

§ 13.1 The Grantee shall be responsible for damage to life and property, including environmental pollution and/or contamination, arising from the actions of (a) its Contractors, subcontractors, agents and employees activities related to this Agreement or any associated Project Agreement and (b) any subsequent use of the Project.

§ 13.2 The Grantee shall carry sufficient insurance or have a sufficient self-insurance program to cover the risks for work performed under this Agreement and any associated Project Agreement. If the Grantee's insurance fails to cover agents, Contractors or subcontractors, the Grantee will require agents, Contractors and subcontractors performing work on Projects to carry insurance sufficient to cover risks associated with activities associated with a Project. Insurance purchased by the Grantee, its agents, Contractors, or subcontractors, shall list the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities as additional insureds.

§ 13.3 To the extent allowable by law, the Grantee shall indemnify, defend and hold harmless the Commonwealth, the Department, the Virginia Department of Transportation, and their officers, agents, and employees of these entities from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any act or omission by the Grantee, its Contractors, subcontractors, agents or employees in the performance of the work covered by this Agreement or associated Project Agreement. Nothing in this Agreement shall constitute a waiver of sovereign immunity of any Party.

§ 13.4 The obligations of this Article shall survive the termination or completion of this Agreement and any Project Agreement and the Department's payment.

ARTICLE 14. CONFLICT OF INTEREST

§ 14.1 The State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended, shall apply if the Grantee is a local or state government, or a local or state governmental agency, commission, or authority.

§ 14.2 The following shall apply if the Grantee is not subject to the State and Local Government

Conflict of Interests Act, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), as amended:

.1 The following definitions shall apply concerning conflict of interest provisions in this Agreement and any associated Project Agreement:

“Contract” or “agreement” means any agreement, including any contract or subcontract, whether written or not, to which the Grantee is a party, or any agreement on behalf of the Grantee, including any contract or subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any associated Project Agreement.

“Employee” means any person employed by the Grantee, whether full time or part time.

“Thing of pecuniary value” means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

.2 Other than the salary and remuneration received from the Grantee as a normal attribute of employment with the Grantee, no employee of the Grantee shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person:

a. in consideration of the use of the employee’s position or status with the Grantee to obtain for any person or business any employment with or any contract with the Grantee or with any Contractor, subcontractor, or supplier of the Grantee, including any consulting or professional services contract.

- b. from any person or business other than the Grantee for performing any services for the Grantee in connection with any projects funded pursuant to or subject to this Agreement or any Project Agreement written hereunder.
- c. from any person or business other than the Grantee for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement or any Project Agreement.

.3 If any contract is obtained in violation of this Article or if the terms of this Article are violated, the Department may require the Grantee to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article, and remit recovered funds to the Department.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES

§ 15.1 The Grantee warrants that it has not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure a Project Agreement, and that it has not, and shall not, pay or agree to pay any company or person, other than a bona fide employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. Upon breach or violation of this Article, the Department shall have the right to terminate this Agreement or any Project Agreement pursuant to Section 11.4 of this Agreement.

ARTICLE 16. NON-DISCRIMINATION AND SEXUAL HARRASSMENT TRAINING

§ 16.1 In the solicitation or awarding of any contracts directly related to this Agreement or any associated Project Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law relating to discrimination in employment.

§ 16.2 During the performance of this Agreement or any associated Project 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, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. 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 the Grantee, where applicable, is an equal opportunity employer. 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.

§ 16.3 During the performance of this Agreement or any associated Project Agreement, the Grantee agrees as follows: 1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over \$10,000; 2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, 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 chapter; 3. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor'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 contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook. The contractor shall include the provisions of subdivisions 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that such provisions shall be binding upon each subcontractor or vendor.

§ 16.4 In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a contract, including procurement of materials or equipment, each potential Contractor shall be notified by the Grantee of the Grantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

ARTICLE 17. DRUG-FREE WORKPLACE

§ 17.1 During the performance of this Agreement and any Project Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) 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 workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) 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 (d) 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 contract awarded to a contractor in accordance with this chapter, 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 Agreement.

ARTICLE 18. SMALL BUSINESS PARTICIPATION

§ 18.1 The Grantee is encouraged to seek and use certified Small Business enterprises in relation to any Project Agreement issued pursuant to this Agreement. see § 2.2-4310 of the *Code of Virginia* (1950), as amended.

ARTICLE 19. PERSONS WITH DISABILITIES

§ 19.1 The Grantee, its agents, employees, assigns or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

ARTICLE 20. NONRESTRICTIVE CLAUSE

§ 20.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 21. SPECIFIC PROJECT CONSIDERATIONS

§ 21.1 The Americans with Disabilities Act (“ADA”) established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as “ADA paratransit eligible” by a public entity. If the Grantee provides paratransit services, the Grantee must honor the certification of a visitor qualified by another public entity for a period of 60 days during a calendar year. The visiting rider shall not have to provide any additional documentation, or participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the 60 days in a calendar year, the visitor must go through the paratransit system’s qualification process.

§ 21.2 Any motor vehicles purchased under this grant shall comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the *Code of Virginia* (Title 46.2).

§ 21.3 The Department requires a systematic, multi-disciplined approach design to optimize the value of each dollar spent on a Project through the engagement of a team of architects, engineers or other professionals to identify, analyze and establish a value for a function of an item or system Value Engineering (“VE”) for any project with a total cost in excess of \$10 million (“Major Capital Projects”). A Major Capital Project is usually identified during the application review process. VE for a Project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (“PE”) or at 30 percent of design. Some large or complex projects may require more than one VE study over their duration. For Major Capital Projects, upon completion of the VE phase, the Grantee shall submit the VE report to the Department. The Department may also require that VE be performed on individual Projects that do not qualify as Major Capital Projects. The Grantee is encouraged to conduct VE on all Projects for construction, including bus maintenance and storage facilities, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

§ 21.4 The Department encourages the Grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences and to improve the performance of the process or product being reviewed (“Peer Review”). Although the Grantee is encouraged to conduct a Peer Review with all capital projects, the Department may require Peer Review in some instances.

§ 21.5 The Grantee is encouraged to perform crime prevention reviews during the design phase of all Department-funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or

facility for both transit patrons and transit employees. The level of the review should complement the size and scope of the Project. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the Grantee and be available for Department review upon request.

ARTICLE 22. SPECIAL CAPITAL PROVISIONS

§ 22.1 The purchase of all equipment and services, and the construction of any facilities financed in whole or in part pursuant to a Project Agreement (“Project Equipment” and “Project Facilities”), shall be undertaken by the Grantee in accordance with this Agreement, Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The Department reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the Grantee.

§ 22.2 The Grantee agrees that the Project Equipment and Project Facilities shall remain in service in the area and be used for the purpose for which they were purchased for the duration of the Useful Life. Useful Life will be defined by the Grantee utilizing Generally Accepted Accounting Principles, Internal Revenue Service or other industry practice standard agreeable to Department. If any Project Equipment or Project Facilities is not used for the intended purpose defined in the Project Agreement during the Project Equipment’s and Project Facilities’ Useful Life, the Grantee shall immediately notify the Department. In the case of Project Equipment, the Department shall have the option of requiring the Grantee either to transfer title to the Project Equipment to the Department or to remit to the Department an amount equal to a proportional share of the fair market value remaining in the Project Equipment based upon the Department’s ratio of participation detailed in the Project Agreement. In the case of Project Facilities, the Grantee shall remit to the Department the proportional share of the remaining fair

market value of the Project Facilities based upon the ratio of the Department's participation detailed in the Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Project Facilities for review by the Department upon request.

§ 22.3 At any time, the Grantee shall permit the Department or its authorized representatives to inspect all vehicles, Project Facilities and Project Equipment; all transportation services rendered by the Grantee using such vehicles, Project Facilities or Project Equipment; and all relevant Project data and records.

§ 22.4 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth, such insurance or self-insurance adequate to protect Project Facilities or Project Equipment and persons using such Project Facilities or Project Equipment throughout their use. The Department will be named as an additional insured.

§ 22.5 With regard to contracts for construction or facility improvement totaling less than \$250,000, the Grantee shall follow its own requirements relating to bid guarantees, performance and payment bonds. For contracts in excess of \$250,000, the Grantee shall adhere to the following minimum requirements:

- A bid bond from each bidder from a surety company legally authorized to do business in Virginia. The amount of the bid bond shall not exceed five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond for 100% of the contract price.
- A payment bond for 100% of the contract price.
- In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check in the amount required for the bond.
- The Grantee shall seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

§ 22.6 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any associated Project Agreement, the Department reserves the right, in its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of the funds supplied by the Department, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to the Department.

ARTICLE 23. MISCELLANEOUS PROVISIONS

§ 23.1 This Agreement and any Project Agreement shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Project Agreement shall constitute a waiver of sovereign immunity. Any legal action concerning this Agreement or any Project Agreement shall be brought in the Circuit Court of the City of Richmond, Virginia.

§ 23.2 The Grantee shall comply with all of the requirements specified in an associated Project Agreement, as well as all applicable Federal, State, and local law and regulations.

§ 23.3 If any term or provision of this Agreement or any Project 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 or any Project Agreement shall be binding upon the Parties.

§ 23.4 All provisions of this Agreement and any Project Agreement shall be binding upon the Parties and their respective successors and assigns.

§ 23.5 Upon the Department's request, the Grantee shall appoint one principal representative selected by the Department to the oversight board of any public transit service provider on which the

Commonwealth is not already represented by a principal member and which benefits from state funding provided to the Grantee. If the members of an oversight board are determined through public election, or if complying with this requirement will violate a federal or state statute or General Assembly authorization, this provision shall not apply.

§ 23.6 The Grantee shall adhere to the current grant administration requirements issued by the Department and if required by the Department maintenance of asset inventory and performance reporting through the Department's web-based grant management system.

§ 23.7 Any repayment by the Grantee to the Department for funds granted by the Department pursuant to this Agreement and any associated Project 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.

§ 23.8 All covenants and provisions of this Agreement shall be made expressly a part of any contracts executed by the Grantee, and shall be binding on the Contractors, their agents, and employees.

ARTICLE 24. UNAUTHORIZED ALIENS

§ 24.1 The Grantee certifies that it does not, and that it shall not, during the performance of this Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the "Act"). The Grantee will also contractually require any Contractors who participate in any Project funded pursuant to this Agreement and any Project Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

IN TESTIMONY THEREOF, the Parties have caused this Agreement to be executed, each by its
duly authorized officers, all as of the day, month, and year first written.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

BY:

DIRECTOR DATE

WITNESS: _____
(NAME AND TITLE) DATE

GRANTEE

BY:

CHIEF EXECUTIVE OFFICER DATE

WITNESS: _____
(NAME AND TITLE) DATE