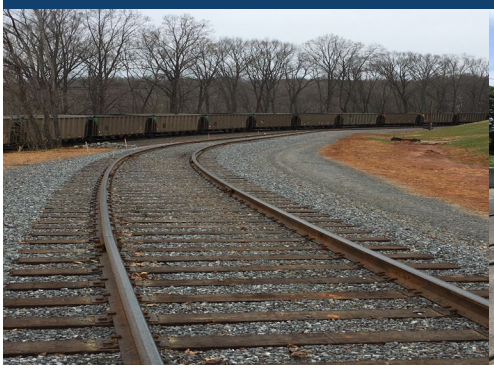
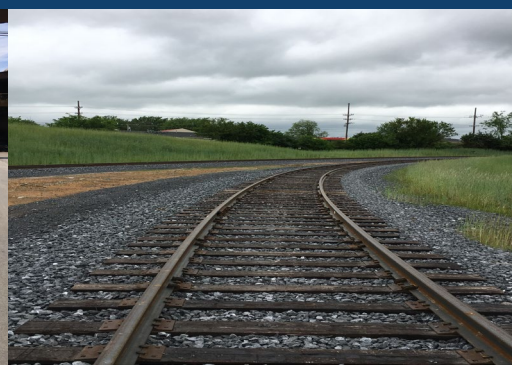
DRPT
Rail Industrial Access

Application Guidance & Procedures





Virginia Department of Rail and Public Transportation

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Introduction

Purpose

Section 33.2-1600 of the *Code of Virginia* gives the purpose for the Industrial Access Railroad Tracks Program. In this statute, the General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial buildings or facilities.

State Policy:

According to a resolution passed November 16, 1995 by the Commonwealth Transportation Board (CTB), the Industrial Access Railroad Tracks Program is to provide funding to be used as an incentive to encourage industrial or commercial development in the Commonwealth of Virginia. It is not intended to fund projects that will not have a significant economic impact.

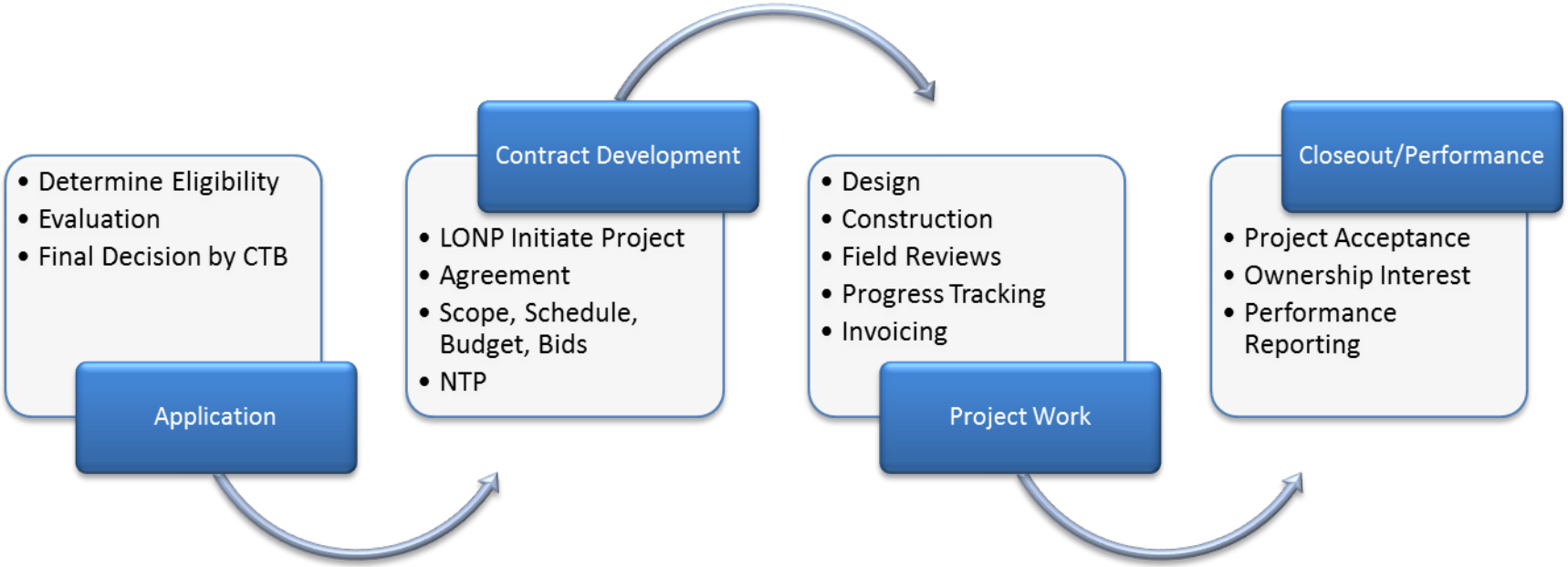
Program Contact

Questions related to the Industrial Access Railroad Tracks Program should be directed to DRPT of Rail and Public Transportation (DRPT) at the following address, phone and fax numbers.

Linda Balderson, Manager of Rail Industrial Access Programs
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, Virginia 23219

Telephone (804) 786-3427
Email: linda.balderson@drpt.virginia.gov

RAIL INDUSTRIAL ACCESS PROGRAM PROCESS



Program Administration

Administrative Responsibility

The Industrial Access Railroad Track program is administered by the Director of DRPT in accordance with the direction of the CTB. The Director may consult with the Commissioner of Agriculture and Consumer Services, the Director of the Office of Business Assistance, and the Director of the Economic Development Partnership (or their designated representatives) concerning applications for funds in accordance with the *Code of Virginia*. The DRPT staff will receive and process applications, make recommendations to the CTB, supervise the program, and approve for payment the costs incurred and invoiced by the Grantee.

How to Apply

Application materials can be downloaded from DRPT's Online Grant Application webpage (OLGA):
https://olga.drpt.virginia.gov/news.aspx

Completed Applications should be submitted via hard copy to:

Linda Balderson, Manager of Rail Preservation and Access Programs
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, Virginia 23219

Or via email to:
linda.balderson@drpt.virginia.gov

Eligible Recipients

The following organizations are eligible to apply for Industrial Access Railroad Track funding:

1. Business, Commercial, or Industrial Enterprises
2. Municipal and County Governments acting on behalf of a Business, Commercial or Industrial enterprises
3. Local Departments of Economic Development acting on behalf of Enterprises
4. Railroads

All applications for industrial access railroad track funds shall be discussed with the appropriate local government. Each application shall be accompanied by a resolution from the local governing body requesting that such funds be allocated to the proposed project from the Industrial Access Railroad Track Program. The Industrial Access Railroad Track Program is coordinated with the Economic Development Partnership or the Office of Business Assistance. This coordination effort is reflected in the project selection criteria point system.

All new or "start-up" businesses shall submit a copy of their Business Plan with the application.

Eligible Costs

Eligible project cost includes the following:

1. Engineering
2. Site Preparation (including grading and drainage)
3. Track Construction
4. Track Rehabilitation
5. Track Improvement
6. Environmental Mitigation
7. Mainline Railroad Switch

Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities (facilities must be directly associated with revenue carloads) on public or private property currently used or being developed, existing or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others.

Ineligible Costs

Ineligible project costs include the following:

1. Relocation of Utilities
2. Acquisition of Right-of-Way
3. Operation and Maintenance
4. Storage Tracks
5. Rail less than 115 pounds per yard (detailed explanation by applicant and approval by DRPT is required prior to rail purchase of less than 115 pounds)
6. Work begun prior to CTB allocation, an executed Agreement, and a Notice to Proceed from DRPT, unless the Grantee was issued a Letter of No Prejudice

The Grantee will be responsible for cost overruns.

Allocation of Funds

The amount of industrial access railroad track funds allocated to a project shall be limited to no more than $450,000 to any one county, city, or town per fiscal year (July 1 to June 30). The grant shall be awarded based on a 70/30 split (70% Department with 30% grantee match).

The CTB may consider a supplementary allocation to any project, provided such supplementary allocation does not exceed the established funding limitation for the project.

In the evaluation of projects, the CTB considers the cost of construction of an access track in relation to the prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits.

Expending Committed Funds

Committed industrial access railroad track funds are those funds which have been allocated to a project but not spent in the year of allocation. Committed funds shall be expended within 24 months of the date of CTB allocation.

Grantees can request a time extension in writing to DRPT, which will be subject to approval by the Director.

Annual Carload Performance

The Agreement for grant funding shall include performance criteria in order to preserve the public benefit gained through investment of public dollars. Performance shall be reported annually on a fiscal year schedule for the time period beginning July 1 after payment of the final invoice which constitutes project acceptance by DRPT. DRPT's fiscal year runs July 1 through June 30. The Grantee shall submit performance criteria on Annual Carloads per the terms of the Agreement.

Annual Carload performance counts the revenue carloads run over the track improvements funded through the Rail Industrial Access Grant program. The Grantee must report Annual Carloads for three years in accordance with the terms of the Agreement.

If Annual Carload performance did not meet or exceed the thresholds set in the Agreement, an additional three-year performance period may be requested in writing. This request is subject to review by the Director and approval may be granted by the Director after a review of reported carloads in relation to the rail vs. truck ratio forecasted at the time of application.

Failure to satisfy performance requirements shall result in reimbursement of grant funds to DRPT. Repayment shall be based on the percentage of the performance target achieved. The percentage for partial repayment of the grant amount shall be determined by the difference between the highest Annual Carload performance reported and the minimum threshold necessary to achieve 50 application points.

Commonwealth's Ownership Interest

The Grantee shall be contractually committed to providing the Commonwealth with an ownership interest in that portion of trackage and facilities constructed or improved with the use of Industrial Access Railroad Track funds. Ownership interest of the Commonwealth in grant funded rail access shall be **15 years**, coinciding with the start of the performance period.

As part of retaining the Commonwealth's ownership interest, the access railroad track shall be made available for use by all common carriers using the railway system to which they connect. A certification issued by the landowner or using business must state that they will provide for the continuous maintenance and assume the liability of the tracks and facilities. Guarantees as to the right of way and adjustment of utilities, to include their source of donation or funding, shall be given by the landowner or using business.

Any cost involved in any subsequent relocation or removal of industrial access railroad track facilities shall be borne by the landowner, using business, or developer. Following relocation, the Commonwealth's ownership interest will be redefined. In case of removal, the Commonwealth will be reimbursed the value of its interest in the facilities.

Purchasing or Selling Industrial Access Tracks

The Commonwealth may, at its option, allow the industry, using business, or developer to purchase the Commonwealth's interest in an industrial access railroad track facility at a value determined by the Director. In the event the landowner, using business, or developer desires to sell their property or interest in property on which access tracks have been constructed under this program, the sale will be subject to the Commonwealth's ownership interest and written approval.

Industry Certifications and Repayment

The Grantee shall certify that it will provide the rail traffic (Annual Carloads) indicated in the project application. Annual Carloads will be defined in the Agreement.

The Grantee will be required to repay DRPT its contribution to the cost of the access track if:

1. Annual Carloads for the performance period does not meet or exceed the thresholds set in the Agreement which qualified the Grantee for funding.
2. The rail constructed with grant funding is no longer used for its intended purpose. The repayment of DRPT's ownership interest will be a pro-rated amount as determined per the terms of the grant funding Agreement.

The Grantee will be required to repay DRPT its contribution to the cost of the construction and materials, less depreciation, if the project tracks are abandoned, relocated or sold (without a grant reassignment).

Account Records, Reports

The Grantee shall establish and maintain separate accounts for the project. The Grantee and its subcontractors shall retain all records pertaining to this project for three years from the date of the final payment from DRPT.

Payment

The Grantee shall submit one invoice as soon after project completion as possible. The invoice should include copies of the paid invoices for the entire rail cost of the project. Included with the invoice will be a certification of the overall capital investment by the Grantee (an Attachment to the Agreement). The request for payment must be within the 24-month contract period for expending funds (beginning from the date of the CTB's approval of the Project). The Director may extend the contract period due to extenuating circumstances upon receipt of a written request.

Once DRPT has received notice that the project is complete it shall perform a field review of the Work before final audit and payment. The field review and inspection shall be done as quickly as time permits, but no later than 60 days from receiving the notice that the project has been completed.

Only work specified in an executed grant funding Agreement between DRPT and the Grantee is eligible for reimbursement. Work begun prior to a Notice to Proceed from DRPT will not be approved for reimbursement unless DRPT issued a Letter of No Prejudice which covered the Work at issue.

Project Selection and Implementation

DRPT will assemble all necessary data and documents and review and score the application. Using the procedures outlined, DRPT will develop recommendations. These recommendations will be provided to the Director who will present recommendations to the CTB. The CTB will establish priorities and allocate funds for selected projects.

Following the decision of the CTB on project funding, the applicants will be notified in writing. Successful applicants will enter into the contractual commitments required under Item 5 of the Industrial Access Railroad Track Policy pertaining to responsibility for maintenance, liability, relocation, and removal.

For projects involving the reconstruction or improvement of existing tracks or facilities, only those materials installed with the use of Industrial Access Railroad Track funds shall become subject to the ownership interest requirements of the Commonwealth. Ownership of materials and facilities in place prior to project implementation shall remain with the original owner.

Applications will not be accepted unless fully complete, including attachments.

Appendix A

Department of Rail and Public Transportation
Industrial Access Railroad Tracks Program Application

Application Date: _____

Applicant: _____

Description of Applicant's Organization (City, County, Economic Development Authority, Etc.): _____

Industry/Business to be served by the proposed Industrial Access Track: _____

Contact Person

Name:

Title: _____

Phone Number: _____

Email Address: _____

Address: _____

_____

_____

Proposed or Existing Location:

_____

Project Description:

_____

_____

_____

Length of proposed Track: _____ Estimated Cost: _____

Requested amount of Industrial Rail Access Funds: _____

The approximate capital outlay to construct and equip the proposed new facility:

_____

- OR -

The approximate capital outlay to construct and equip the proposed expansion:

_____

Estimated annual number of carloads already handled on existing tracks:

_____

Estimated annual number of carloads to be handled on the proposed new track:

_____

Rail carloads ratio of overall inbound/outbound traffic (forecasted estimated for first three years after project completion): Ratio _____ = Number of railcars _____ divided by number of trucks _____

If a new industry, the estimated number of people to be employed: _____

If an existing industry, the number of people currently employed: _____

And the estimated additional employment to be created by the expansion: _____

Railroad that will serve the business/industry: _____

Planning, Design, and Engineering Completion: _____

Construction Start Date: _____

Construction Completion Date: _____

==========

The following documentation is to be attached to the application.

Applications will not be accepted unless fully complete, including attachments.

1. Resolution from the Local Governing Body supporting the project and requesting the Rail Industrial Access Funds.
2. Location sketch showing the location of the site on an area map.
3. Drawing of the proposed track project showing the clear point(s).
4. Signed maintenance and liability certification.
5. Virginia Substitute W-9 with federal ID number/EIN and DRPT Vendor sheet.
6. Railroad support letter which documents that the railroad owning the main line to which the proposed access track will connect has agreed to:
    A. Serve the industry or business.
    B. Approve and/or participate in the construction of the proposed access track.
    C. Making the facilities available for use by all common carriers using the railway system to which the industrial access track connects.
7. Narrative to include:
    A. Background information about the business.

B. A statement of need for the grant and how this support rail service as a part of the project.

C. Coordination efforts with economic development (local, regional, or state). A letter from the Virginia Economic Development Partnership or a local or regional economic development agency will receive added points.

D. Information regarding a partnership with the Port of Virginia, if applicable.

8. Business Plan for new or "start-up" businesses.

If application scores 50 points and is recommended to go before the Commonwealth Transportation Board (CTB) for consideration, the applicant <u>must</u> contact their CTB district member to brief them on the proposed project. Contact information for the CTB member will be provided by DRPT staff upon completion of application scoring.

ATTACHMENT 1

Sample Resolution for Local Support of the Utilization of Industrial Access Railroad Track Funds

A RESOLUTION OF THE
(*Name of political subdivision and governing board, council, or transportation district here*)

WHEREAS, (*name of industry*) has expressed its intent and desire to the (*name of political subdivision and governing board, council, or transportation district here*) to locate its commercial, business, or industrial operations in (*name of City, County, or Town*); AND,

WHEREAS, (*name of industry*) and its operation will require rail access; AND,

WHEREAS, the Officials of (*name of industry*), have reported to the (*name of City, County, or Town*), their intent to apply for Industrial Access Railroad Track Funds from the Commonwealth of Virginia's Department of Rail and Public Transportation in the amount of $(*amount applied for*); AND,

WHEREAS, (*name of industry*), has requested that the (*name of political subdivision and governing board, council, or transportation district here*) provide a Resolution supporting its application for said funds which are administered by the Virginia Department of Rail and Public Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the (*name of political subdivision and governing board, council, or transportation district here*) of the (*name of City, County, or Town*) hereby endorses and supports the application of (*name of industry*), for $(*amount applied for*) in Industrial Access Railroad Track Funds; AND,

BE IT FURTHER RESOLVED, that the (*name of political subdivision and governing board, council, or transportation district*) hereby makes known its desire and intent to support the Commonwealth Transportation Board in providing the maximum financial assistance to (*name of industry*), for the purpose of locating its (*business, commercial, or industrial facility*) in (*name of City, County, or Town*).

ADOPTED:

_____
(Title of mayor, chairman, political subdivision)

CLERK

ATTACHMENT 2

Insert location sketch showing the location of the site on an area map. (Google map with location and spur highlighted.)

ATTACHMENT 3

Insert Drawing of proposed track project showing the clear point(s).

ATTACHMENT 4

SIGNED APPLICANT / INDUSTRY CERTIFICATION

Sample Applicant/Industry Certification
(*Name of Applicant/Industry Here*)

(*Name of applicant/industry*) hereby certifies to the Commonwealth of Virginia that the Applicant will provide the Right-of-Way for and assume liability of any railroad tracks and associated facilities, financed by the Railroad Industrial Access Fund, that are built on its (*name of City, County, or Town*) plant site and subsequent operations. This includes any claims or attempts to hold liable the Commonwealth of Virginia, for any matter concerning the tracks, as a result of the Commonwealth's Ownership Interest in the tracks.

Also, (*Name of applicant/industry*) agrees to assume sole responsibility for the continuous maintenance of tracks financed by the Railroad Industrial Access Fund.

_____
Signature

_____ _____
Printed Name Date

_____
Title

ATTACHMENT 5

VIRGINIA SUBSTITUTE W-9 AND QUESTIONNAIRE

Form **W-9** Commonwealth of Virginia Substitute W-9 Form Revised July 2014	**Request for Taxpayer Identification Number and Certification**	

Section 1 - Taxpayer Identification

☐ **Social Security Number (SSN)** ☐ **Employer Identification Number (EIN)** — — — — — — — — —	Please select the appropriate Taxpayer Identification Number (EIN or SSN) type and enter your 9 digit ID number . The EIN or SSN provided must match the name given on the "Legal Name" line to avoid backup withholding. If you do not have a Tax ID number, please reference "Specific Instructions - Section 1." If the account is in more than one name, provide the name of the individual who is recognized with the IRS as the responsible party.
Dunn & Bradstreet Universal Numbering System (DUNS) (see instructions) — — — — — — — — —	**Legal Name:** **Business Name:**

Entity Type		**Entity Classification**		**Exemptions (see instructions)**
☐ Individual	☐ Corporation	☐ Professional Services	☐ Medical Services	Exempt payee code (if any): (from backup withholding) _____
☐ Sole Proprietorship	☐ S-Corporation	☐ Political Subdivision	☐ Legal Services	
☐ Partnership	☐ C-Corporation	☐ Real Estate Agent	☐ Joint Venture	
☐ Trust	☐ Disregarded Entity	☐ VA Local Government	☐ Tax Exempt Organization	Exemption from FATCA reporting code (if any): _____
☐ Estate	☐ Limited Liability Company	☐ Federal Government	☐ OTH Government	
☐ Government	☐ Partnership	☐ VA State Agency	☐ Other	
☐ Non-Profit	☐ Corporation			

Contact Information

Legal Address: City: State : Zip Code:	**Name:**	
	Email Address:	
	Business Phone:	
Remittance Address: City: State : Zip Code:	**Fax Number:**	
	Mobile Phone:	
	Alternate Phone:	

Section 2 - Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined later in general instructions), and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See instructions titled Certification

Printed Name:		
Authorized U.S. Signature:		Date:

ATTACHMENT 5 (CONTINUED)

VENDOR QUESTIONNAIRE
TO BE FILED WITH Virginia Substitute W-9

The below information is used for internal report classifications by DRPT Staff.
Please check all items below that you know apply to your organization.
Please use a question mark for items that may apply but for which you are not sure.

_____ Small Business – Registered with Virginia
_____ Woman Owned Business – Registered with Virginia
_____ Minority Owned Business – Registered with Virginia
___X__ DRPT Grant Recipient
_____ Human Services Transportation Provider
_____ Disadvantaged Business Enterprises (DBE) – Federal Registration
_____ MPO or PDC
_____ Rail
_____ Rideshare Provider
_____ Public Transportation Provider
_____ Consultant

ATTACHMENT 6

RAILROAD SUPPORT LETTER

Date

Linda Balderson
Rail Preservation and Access Programs Manager
Virginia Department of Rail and Public Transportation
600 E. Main Street, Suite 2102
Richmond, Virginia 23219

Dear Ms. Balderson:

Applicant or its nominee will apply for Industrial Access Railroad Track Funds for the construction of *insert spur or siding* at their *expanding/proposed* facility in *City/County*, Virginia. A preliminary design has been discussed, and when the final drawings are submitted and approved by *insert railroad*, a sidetrack agreement between *the applicant* and *the railroad* will be executed.

The railroad is aware of the provision of the Code of Virginia, Section 33.2-1600.F which provides for common carrier access of tracks constructed or rehabilitated with Industrial Access Railroad Funds. Currently, *the railroad* will be the only railroad connecting with the track to serve *the applicant*. However, it is understood that if, in the future, another common carrier constructs trackage to connect with the sidetrack or obtains trackage rights over *the railroads* mainline tracks that would enable it to provide service to *the applicant's* facility, it will have access to and be entitled to use the access tracks.

The railroad recommends the use of Industrial Access Railroad funds for the construction of the access tracks to serve *the applicant's* facility. The railroad will serve *the applicant* on this access track once the site plan is approved, constructed, inspected, and a sidetrack agreement is duly executed.

Sincerely,

ATTACHMENT 7

APPLICANT BACKGROUND INFORMATION

Insert a narrative here of background information on the applicant business.
Narrative to include:

A. Background information about the business.
B. A statement of need for the grant and how this support rail service as a part of the project.
C. Coordination efforts with economic development (local, regional, or state). A letter from the Virginia Economic Development Partnership or a local or regional economic development agency will receive added points.
D. Information regarding a partnership with the Port of Virginia, if applicable.

ATTACHMENT 8

BUSINESS PLAN

Insert the Business Plan for new or "start-up" businesses.

Appendix B

Project Selection Criteria Point System

Under 50 will not be recommended to the CTB

1. Total Number of Carloads (Annually)

a. 501 or greater	20 points
b. 401 to 500	17 points
c. 301 to 400	14 points
d. 201 to 300	11 points
e. 101 to 200	8 points
f. 100 to 10	5 points

2. Added Employment

a. 101 or greater	20 points
b. 76 to 100	17 points
c. 51 to 75	14 points
d. 26 to 50	11 points
e. 25 or less	8 points
f. 0	0 points

3. Commonwealth's Portion of Track Construction per Capital Investment Cost

a. 0.03 or less	10 points
b. 0.04 to 0.06	8 points
c. 0.07 to 0.10	6 points
d. 0.11 to 0.14	4 points
e. 0.15	2 points

4. Jurisdictional Unemployment Rate (Statewide Unemployment Rate [R])

a. (R + 2.5) or greater	20 points
b. (R + 2.0) to (R + 2.4)	17 points
c. (R + 1.5) to (R + 1.9)	14 points
d. (R + 1.0) to (R + 1.4)	11 points
e. (R + .9) or less	8 points

5. Project included by Virginia Economic Development Partnership or the Virginia Department of Business Assistance as part of initiatives to bring or expand industry in Virginia — 10 points

6. Non-State Contributions to Track Construction

a.	41% or greater	10 points
b.	31% to 40%	8 points
c.	21% to 30%	6 points
d.	11% to 20%	4 points
e.	10% or less	2 points
f.	0%	0 points

7. Contributes to the long term viability of a Shortline Railroad — 10 points

Unscored Application Requirement:

Estimate of the percentage of Railcars (vs. Truckloads) as the overall mode of transportation for inbound and outbound traffic.

- Breakdown of number of railcars and truckloads used to achieve estimated percentage.

Notes:

- Any applicant receiving less than 50 points will not receive a favorable recommendation from staff unless there are extenuating circumstances.
- Applications will not be accepted unless fully complete, including attachments.
- Use unemployment data for the latest available period found at: https://data.virginialmi.com/gsipub/index.asp?docid=342

DRPT Use Only:

Minimum threshold of railcars for Grantee to still achieve passing score (50 pts.). _____

Appendix C

Virginia Department of Rail and Public Transportation
Rail Industrial Access Performance Report for FY ____
RIA ____ – _____ (_____)

Minimum Threshold Carloads: _____

Linda Balderson
Rail Preservation & Access Programs Manager
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

Dear Ms. Balderson:

I am writing to file the annual Performance Report as required by the Rail Industrial Access Agreement between the Department and _____ dated _____. I understand that carloads are reported annually for three years for consideration in determining whether the public benefit has been achieved by _____.

Below is the annual auditable quantity of carloads for the Department's fiscal year _____ annual reporting period:

Report Period of Performance	Annual Carloads	Year of Performance Period
July 1, 20__ – June 30, 20__		1
July 1, 20__ – June 30, 20__		2
July 1, 20__ – June 30, 20__		3

_____ _____ _____
Signature of Authorized Representative Printed Name Date

AFFIDAVIT

State of _____, City/County of_____, to wit:

_____, being first duly sworn, deposes and says as follows:

He/she is _____ **(job title)** for the Grantee and has knowledge regarding the business operations of the Grantee.
He/she hereby attests that to the best of his/her knowledge and belief, the foregoing information is full, true, correct and auditable

_____
Affiant

Subscribed and sworn to before me this _____day of_____, 20____.

_____
Notary Registration No._____ Notary Public

My commission expires:

Appendix D

DRPT Procurement Guidelines
Rail Industrial Access (RIA) Program

1. The Grantee is encouraged to obtain quotes from Small, Women, and Minority (SWAM) vendors if available for services under this contract. However, the Grantee is not required to use a SWAM vendor. The Virginia Department of Small Business and Supplier Diversity has a list of SWAM companies through their website vendor search located at http://www.dmbe.virginia.gov/cgi-bin/search.cgi#default. A quick search can be made from the database on this website using the keyword "Railroad" entered into the NIGP description field under the NIGP Code/Description tab. Of note, DRPT does not maintain this database and has no control over companies listed in the system or displayed by the search. The search engine produces more services than track construction including material suppliers and engineering consultants.

2. The goal of the agency is to encourage competition. In the case of RIA projects, the Grantee should use competitive sealed bidding. Negotiation is not part of this type of bidding. The reason negotiation is not permitted is that detailed engineering plans as well as specifications have been developed clearly defining the construction scope. Therefore, all of the contractors are bidding from the same set of plans and specifications.

The competitive sealed bidding process is standard on all Virginia Rail Industrial Access projects and cannot be waived due to the public funds involved.

The Grantee shall submit the bid package to DRPT. After DRPT review of the bid package, the Grantee shall advertise the project in a newspaper of general circulation for at least one day; online advertisement is allowable if the site allows access to the general public. The bidding period must remain open for at least 10-days to provide enough time for the bidders. No contractor shall be excluded from bidding. Further review of site conditions is allowable provided all contractors are provided with the same opportunities and information.

3. Once bids have been received the Grantee shall perform a public bid opening stating the company name, total price, and apparent low bidder. There should be a process in place so if there is a significant error in the low bid, the contractor is allowed to withdraw the bid. Receiving the bids via a secured company website including passwords and posting the results on the Grantee's website is considered a permissible alternative.

The Grantee shall submit a bid summary and supporting bidding documents from each contractor to DRPT for review prior to awarding the contract to the lowest responsive and responsible bidder. DRPT reviews the bids and keeps them on file with the grant Agreement.

The Grantee must award the project to the lowest responsive and responsible bidder, as stated in the Code of Virginia Section 2.2-4301(3)(b)(5). If the Grantee desires to award the contract to multiple bidders using individual divisions of labor, the bid documents must clearly identify these divisions and the Grantee's intent to potentially select multiple bidders.

4. DRPT encourages Grantees and contractors to use iron, steel, and manufactured goods used in the project are produced in the United States. All material purchases for this project will be subject to the appropriate sales tax as these expenses are not considered exempt. In addition, prevailing wages and benefits identified under the Davis-Bacon Act are not required for RIA projects.

5. The Grantee may perform or contract for construction administration and construction management services. However, the combined amount of all these incidental services including but not limited to management and administration shall not exceed five percent of the Total Project Budget.

6. The RIA program is based on a single final invoice reimbursement. The Grantee will pay for the work performed by the contractors upfront. DRPT does not allow progress billing under this program and will only review a final invoice at the end of the rail construction project. In addition, the Grantee will need to have completed a certain level of capital expenditures to the facility site prior to submitting the final invoice. The specific amount of capital expenditures required can be provided to the Grantee by the DRPT Program Manager.

Example: to be eligible for reimbursement of $300,000, the Grantee must have capital expenditures equal to or greater than $2M. DRPT will then review the final invoice package, perform a field inspection, and recommend payment of eligible project costs within 60 days.

7. It is important to note that some costs relating to the track construction may not be considered eligible. Non-eligible expenses under the RIA program include the following:

- utility relocation,
- right-of-way acquisition,
- operations/maintenance, and
- purchase/installation of rail less than 115 lbs/yd

Note: All steel rail shall be either new or meet AREMA Class 1 specifications for relay rail.

Appendix E

Tax Map Parcel Number: _____

PREPARED UNDER THE
SUPERVISION OF THE
OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA

After recordation, return to:
Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

COMMONWEALTH OF VIRGINIA

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

FUND FOR CONSTRUCTION OF INDUSTRIAL ACCESS RAILROAD TRACKS

GRANT AGREEMENT

GRANTEE: _____

PROJECT: SIDETRACK CONSTRUCTION

_____, VIRGINIA

AGREEMENT NUMBER: _____

APPLICATION NUMBER: _____

FUND FOR CONSTRUCTION OF INDUSTRIAL ACCESS RAILROAD TRACKS GRANT AGREEMENT

Agreement Number: _____

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

RECITALS

WHEREAS, the Grantee proposes to _____ as set out in its application dated _____ ("Project"); and

WHEREAS, the Grantee's application for funds was acknowledged and a resolution of support was issued by the _____, Virginia on _____; and

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

WHEREAS, a Letter of No Prejudice from the Department was issued to the Grantee on _____; and

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

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

WHEREAS, the Grantee understands and acknowledges that § 33.2-1600(F) of the *Code of Virginia* (1950), as amended, requires that the tracks and facilities constructed with such funds shall be the property of the Commonwealth of Virginia ("Commonwealth") for the useful life of the Project as determined by the Director of the Department, and shall be 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; and

WHEREAS, the Parties wish to procure the Project using the Department's guidelines which include but are not limited to advertising, a goal for Small, Women, and Minority ("SWAM") solicitation, sealed competitive bidding, public bid opening, and award to the lowest responsive and responsible bidder.

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

DEFINITIONS

Annual Carloads means the total number of loaded revenue rail cars handled by the Facility during the Department's fiscal year from July 1 through June 30 (counted and reported for purposes of Section 3.2). A single carload is considered (1) a loaded inbound car received by the Facility or (2) a loaded outbound car shipped from the Facility. Empty and non-revenue car movements do not count towards the Annual Carload total, unless the Grantee's business by rail involves the construction or rehabilitation of railroad cars.

Application Points means the number of points an application achieves during the Department's scoring process. Fifty Application Points must be achieved for the Department to recommend the Project for CTB approval.

Capital Expense means the total amount of investment in the new or expanded Facility including the cost of the rail.

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

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

Department's Interest Period means the period of the Department's ownership interest in the completed Project. The Department's ownership interest in the completed Project begins after acceptance of the Work by the Department, and runs for a period lasting 15 years from the July 1 following such acceptance by the Department. The Department's calculation of the interest in years four through 15 is detailed in Attachment A.

Designated Representative means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the Party in issues associated with the Work or this Agreement.

Director means the Director of the Department.

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

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

Grantee Contribution means the funding amount that the Department determines is required to match funds provided by the Department. This match participation may include a cash matching contribution from a private source, which may include a railroad, a regional authority, a local government source, or a combination of such sources of total Project costs.

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

Intermodal Unit means a Container or semi-truck trailer (counted as a Container for purposes of Section 3.2) moved on at least part of its trip by railcar. One railcar load is equivalent to four Intermodal Units.

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.

Minimum Threshold means the minimum number of rail cars necessary to achieve 50 Application Points.

Notice to Proceed means written notice issued by the Department authorizing the Grantee to commence a particular portion of the Work.

Performance Period means the three-year period following acceptance and payment of the invoice, which may be extended, pursuant to Section 3.4, for an additional three-year period.

Project Benefit means the specific benefit that shall be achieved by completion of the Project and the Grantee achieving the performance requirements, as specifically referenced and required in Section 3.1.

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.

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

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

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.

Public Benefit means the benefit to the public of contributing to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets through the establishment of a viable statewide transportation system which has a rail system with the capability of carrying increased amounts of freight and passengers, thereby reducing congestion on roadways.

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 state or federal regulations.

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, as further specified in Section 1.1, to complete the Project.

ARTICLE 1
SCOPE OF WORK AND BUDGET

Section 1.1 The Work under the terms of this Agreement will accomplish the following:

A. Develop a final Project Scope, Project Budget, and Project Schedule for the items specified in Section 1.1.B., for approval by the Department.

B. _____ _____, as specified in Grantee's _____ application, as detailed in the conceptual plan sheet dated _____.

Section 1.2 The maximum funding available for reimbursement by the Department for the Project under this Agreement is the lesser of seventy percent (70%) of the overall Project Budget or $_____.

Unless the Grantee requests in writing, at least 90 days prior to the Grant Expiration Date, and receives an extension in writing from the Director prior to the Grant Expiration Date, the Grantee shall complete the Work and final invoice the Department by the Grant Expiration Date. If all allocated funds are not expended by the Grant Expiration Date, or the extended time period if an extension is granted by the Director, such funds may be withdrawn at the discretion of the Director. It is understood by the Parties that the initial Project Budget as stated above is an estimate as of the date of contracting only, and the final Project Budget may be lower or higher by the time of construction and/or completion of construction.

Section 1.3 The Grantee is responsible for constructing or having the Project proposed in the application constructed. In the event that the Grantee is not performing the Work as described in Section 1.1, the plans and specifications being performed by others shall be approved by the Grantee and the Department. 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.

Section 1.4 In the event that the Grantee receives subsequent allocation of state funding from another source or federal funding applicable to this Project, the allocation from the Fund for Construction of Industrial Access Railroad Tracks shall be reduced by the amount of the subsequent funding. The Grantee will notify the Department of any such subsequent allocations within 30 calendar days. Failure of the Grantee to notify the Department under the terms of this section is a material breach of this Agreement which will invoke the provisions of Section 9.3.

Section 1.5 Any cost of completing the Work in excess of the Project Budget shall be the responsibility of the Grantee. However, the Grantee has the right to revise the Project at its discretion, subject to approval by the Department, so that total Project expense does not exceed the Project Budget, provided that the Work is completed as described in Article 1 and the Department's Maximum Participation will not exceed the lesser of seventy percent (70%) of the overall Project Budget or $_____. The Project Benefit to be achieved pursuant to this Agreement shall remain unchanged by revisions or alterations to the Work.

Section 1.6 Funding availability is subject to appropriation by the General Assembly and allocation by the CTB.

Section 1.7 The Grantee certifies that it has the financial and technical capability to complete the Work in accordance with this Agreement.

ARTICLE 2
PLANNING, DESIGN, ENGINEERING AND CONSTRUCTION

Section 2.1 By its execution of this Agreement, the Department provides Notice to Proceed only with respect to the Work specified in Section 1.1.A. This Notice to Proceed does not apply to the Work specified in Section 1.1.B. The Department does not make any warranty as to the accuracy or suitability of the information submitted, nor does it relieve the Grantee of any liability under this Agreement. Any submissions made by an entity representing the Grantee shall contain the Grantee's written approval of the submission.

Section 2.2 The Grantee shall not commence the Work described in Section 1.1.B. until the Department has issued in writing either a Notice to Proceed or a Letter of No Prejudice with respect to Section 1.1.B. The Department shall have no obligation to reimburse the Grantee for any Work performed in the absence of the Department's issuance of a Letter of No Prejudice (if applicable) and a Notice to Proceed.

A. Notice to Proceed. The Grantee must submit a final Project Scope, Project Budget, Project Schedule, plan title sheet, and _____ Railroad written approval of the plan title sheet for the Work to the Department for approval before the Department will issue a Notice to Proceed with respect to Section 1.1.B.

B. Letter of No Prejudice. In the event the Grantee wishes to perform the Work specified in Section 1.1.B. prior to receiving a Notice to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department with respect to the Work specified in Section 1.1.B. The costs for such Work will only be considered Eligible Project Costs if the costs are incurred after the Department issues a Letter of No Prejudice. These costs will be eligible for payment only after the Department issues a Notice to Proceed with respect to the Work specified in Section 1.1.B. and determines the costs are Eligible Project Costs.

Section 2.3 The Department reserves the right to reject any Project Scope items, Project Budget, or Project Schedule because the Department's own analysis reveals that significant cost or schedule savings could be achieved through other contracting means than Grantee proposes, which meet the Grantee's performance and Project requirements.

Section 2.4 The Grantee shall design and construct the Project according to the most recent Department-approved Project Scope, Project Budget, and Project Schedule.

Section 2.5 The Grantee shall inspect or shall have inspected the Work to:

A. Ensure that it complies with the contract specifications;

B. Verify quantitative measures of materials installed, such as tie counts; and

C. Verify labor and materials charges for contracts providing for payment on an actual cost basis.

Section 2.6 If the Grantee, the Department, or inspectors duly authorized to uphold applicable federal, state, and local laws regarding construction and operating practices, determines that any material or construction is not in accordance with the standards of the serving railroad as informed by the American Railway Engineering and Maintenance-of-Way Association ("AREMA"), or any applicable federal, state, or local law, the Grantee shall replace materials or correct any workmanship necessary to cure the deficiency. The Grantee shall not use any funds provided under this Agreement to pay for a replacement or correction required under this subsection.

Section 2.7 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.

Section 2.8 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 3
PERFORMANCE REQUIREMENTS

Section 3.1 In order to ensure that the Agreement results in the Public Benefit, the Grantee shall provide the Project Benefit for the Work described in Article 1, which shall be a Minimum Threshold of rail carload usage of at least _____ carloads in at least one year of the Performance Period. The annual Project Benefit levels for the Work described in Article 1 for years four through 15 of the Department's Interest Period are detailed in Attachment A.

Section 3.2 The Grantee shall provide annually, by no later than July 30 of each reporting period, and beginning July 1 after acceptance of the Work by the Department, the number of revenue Annual Carloads (excluding carloads carrying reported Containers) or Containers carried over the rail line referred to by the Grantee in its application. The annual reporting period shall be from July 1 of the preceding year to June 30 of the report year, which relates to the Department's Fiscal Year.

Section 3.3 All efforts related to reporting annual Project Benefit performance under this Article shall be auditable and at the Grantee's expense.

Section 3.4 If the Grantee does not meet the Minimum Threshold of the Annual Carload usage goal enumerated in Section 3.1 within the Performance Period, the Grantee must repay the grant funds as specified in Section 3.5. The Grantee may request a three-year extension of the original three-year Performance Period, which must be approved by the Director after review of the Grantee's application and written request for such an extension.

Upon approval of a three-year extension to the Performance Period, the Grantee must meet the Minimum Threshold of the Annual Carload usage goal enumerated in Section 3.1 in one of the additional three years.

Section 3.5 If the Grantee fails to meet the Minimum Threshold of the Annual Carload usage goal during the Performance Period, the Grantee will reimburse the Department based on the percentage of the performance 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 the Minimum Threshold, plus accrued annual interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly

calculated from the date when payment is made by the Department to date of payment of any reimbursement amount.

Section 3.6 In no event shall reimbursement, as defined in this Article, exceed the sum granted by the Department to the Grantee under this Agreement plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the date when payment is made by the Department to date of payment of any reimbursement amount.

Section 3.7 After the three-year Performance Period, or the six-year Performance Period if the Director of the Department grants an extension, if the Project improvements are not used for their intended purpose, then the Grantee shall reimburse the Department the value of the Department's ownership interest, calculated as a percentage of grant funds paid to Grantee beginning the year of non-use, the first year of which will be rounded to equal one whole year if the non-use is not for the entire year, and all whole years thereafter to year 15. As calculated in Attachment A, the reimbursement amount of grant funds paid by Grantee to the Department will be calculated as 6.67 percent of the grant funds paid to Grantee by the Department multiplied by the total years of non-use, plus the statutory legal rate of interest as detailed in Section 9.6, beginning the first year of non-use of operations through year 15 from the date of the Department's acceptance of the Project. Interest applied to the calculated value of the grant funds paid will be calculated from the date when payment is made by the Department to the date of payment of any reimbursement amount by Grantee. The calculated 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.

ARTICLE 4
SPECIAL CONDITIONS

Section 4.1 Where the Grantee is acting as overall Project manager, employee payroll and indirect costs may be charged directly to the Project. The Department will approve reasonable Project charges for the employees, their rates and surcharges. In addition, the Grantee may perform or contract for construction administration and construction management services. However, the combined amount of these incidental services, including but not limited to management and administration, shall not exceed five percent of the Total Project Budget.

Section 4.2 Where applicable, the Grantee agrees to provide or have provided continuous maintenance, at no cost to the Department, of the Project for the duration of the Department's Interest Period in accordance with the standards of the serving railroad as informed by AREMA recommended practices and, as between the Grantee and the Department, to assume all liability in connection with the implementation and operation of the Project. The Grantee further agrees to pay any costs related to the future relocation or removal of the tracks and facilities of the Project.

Section 4.3 All funds granted under this Agreement shall be expended by the Grantee in accordance with the Department's regulations, standard procurement procedures, applicable 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.

Section 4.4 Funding provided pursuant to this Agreement shall be for the reimbursement of Eligible Project Costs and for no other purpose. All purchases made as a matter of this Agreement shall be invoiced to the Department at the actual cost to the Grantee with no markups.

Section 4.5 Funding for Construction of Industrial Access Railroad Tracks shall not be used for the relocation of utilities, mainline switch construction or reconstruction, acquisition of right-of-way, operation, maintenance, rail weight less than 115 pounds per yard, relay rail worn in excess of AREMA Class 1 specifications, or unloading or car moving equipment.

ARTICLE 5
REIMBURSEMENT OF GRANTEE

Section 5.1 The Grantee shall render one Project Invoice upon Project completion for reimbursement of Eligible Project Costs. The invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee in Article 1, the lesser of the amount listed or no more than 70% of the total Project Costs. The invoice must include all expenses related to the Project. The Grantee shall complete the Work and final invoice the Department by the Grant Expiration Date, unless the Grantee requests in writing, at least 90 days prior to the Grant Expiration Date, and receives an extension in writing from the Director prior to the Grant Expiration Date. If all allocated funds are not expended by the Grant Expiration Date, or the extended time period if an extension is granted by the Director, such funds may be withdrawn at the discretion of the Director.

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

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

Section 5.4 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 30 calendar days.

Section 5.5 Within 60 calendar days of notification of disapproval, the Grantee will repay the Department for any items of Work for which the Department has reimbursed the Grantee

which the Department finds in its final audits not to be in accordance with the agreed Work or with any applicable federal, state, or local law or regulation.

Section 5.6 The Grantee is responsible for payment of all Contractors. The Grantee shall attach to the Project Invoice copies of all Contractors' paid invoices and relevant backup information.

Section 5.7 At the completion of the Work, and as part of the Project Invoice for reimbursement, the Grantee shall submit to the Department a Certification Letter of Capital Expenditures in the form of Attachment C.

ARTICLE 6
COMPLETION AND ACCEPTANCE

Section 6.1 Upon completion of the Work, the Grantee shall submit billing as described in Section 5.1 for reimbursement to the Department. The Grantee shall also submit written acceptance of the Project from the serving railroad as a condition for reimbursement by the Department.

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

Section 6.3 If the Work is accepted by the Department, the Project Invoice shall be paid as described in Article 5.

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

Section 6.5 Acceptance of the Work by the Department shall not be construed to benefit any third parties or create any additional liability to the Commonwealth, nor does it relieve the Grantee of its liability under this Agreement.

Section 6.6 If the Department rejects any portion of the Work, the Grantee shall have 30 days from the date of written rejection to submit a written plan for remedying any identified problem with the Work. The problem shall be remedied according to a schedule approved by the Department.

Section 6.7 Any work necessary in connection with the Project, which is not specifically provided for as Work by this Agreement, including but not limited to Re-work, shall be the responsibility of the Grantee.

ARTICLE 7
INTEREST IN COMPLETED WORK

Section 7.1 The portion of the Project consisting of improvements such as the track, ties, and all other materials which are to be constructed and funded under this Agreement shall be the property of the Department to the extent of Department funding. No ownership interest in the real estate upon which the Project is situated is claimed by the Department or the Commonwealth. The Parties acknowledge and agree that the Department has an interest in ensuring that the improvements created by the Project continue to be operated or used for their intended purpose for the Department's Interest Period. For purposes of this Agreement, the value of that interest shall be the value of the payments made by the Department to the Grantee with respect to the improvements less any reimbursement paid by the Grantee to the Department.

If the Project improvements are not used for their intended purpose, the Department will be reimbursed as the percentage of total grant funding shown in Attachment A plus the statutory legal rate of interest as detailed in Section 9.6, but at no time will exceed the original reimbursement amount. 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.

Section 7.2 The Grantee, upon written approval of the Director, shall have the right to expand, modify, rearrange, and/or remove any part of the improvements as it deems necessary provided that such expansion, modification, rearrangement or removal is consistent with the continued operation of the improvements within the Agreement period. Any cost involved in the relocation or removal of said Project shall be borne by the Grantee or using business. In the event that the Grantee modifies, expands, rearranges, and/or removes any part of the improvements as deemed necessary, the value of the Department's ownership interest shall remain in the Project as described in Section 7.1.

Section 7.3 The Grantee may, with the Director's written approval, purchase, sell, transfer, remove, or otherwise dispose of the Project constructed under this Agreement. If the Grantee wishes to sell, transfer, or otherwise dispose of the Project, the Grantee must notify the Department of its intent to sell, transfer, or otherwise dispose of the Project in sufficient time for the Department to participate in negotiations concerning the preservation of its ownership interest. In the event of sale or transfer of the Project, the Department must be provided with an ownership interest in the Project by the Grantee's successor or assign in accordance with Section 7.1. Such ownership interest must be approved by the Department prior to the sale or transfer. If the Project is removed or otherwise disposed of, or if the Department's ownership interest is purchased by the Grantee or the Grantee's successors or assigns, the Department will be reimbursed the value of its ownership interest as determined in Sections 7.1 and 3.5 plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the time of acceptance by the Department.

Section 7.4 The Grantee hereby certifies it owns, controls, or has executed an agreement to purchase or lease the real property upon which the Project will occur and that it will protect and respect the Department's interest in the Project. The Grantee certifies that it has received approvals relative to easements and encroachments that occur as a result of this Project.

ARTICLE 8
SMALL, WOMEN, AND MINORITY (SWAM)

Section 8.1 The Grantee is encouraged to seek and use SWAM enterprises in relation to this Agreement. *Code of Virginia* § 2.2-4310 (1950), as amended, addresses SWAM enterprises.

ARTICLE 9
TERMINATION

Section 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 according to the provisions of this Article.

Section 9.2 The Grantee may terminate the Agreement at any time it is determined under Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days of notice of a material breach. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law. Furthermore, the Grantee will not be required to repay any funds already paid to the Grantee by the Department if such funds were paid for reimbursement of Eligible Project Costs that the Grantee incurred pursuant to the Agreement.

Section 9.3 Upon 30 calendar days' notice to the Grantee, the Department may terminate the Agreement, in whole or in part, if at any time it is determined that the Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days' notice, or if compliance within 90 calendar days is not reasonable as solely determined by the Department, then within such time period as the Department may agree.

The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate the Agreement until after the request has been reconsidered, but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department all funds received pursuant to the Agreement plus the statutory legal rate of interest as detailed in Section 9.6. Such payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid. If this Agreement is terminated for failure to use the Project for its intended purpose, the Grantee will reimburse the Department as detailed in Section 3.7 and the second paragraph of Section 7.1.

Section 9.4 Upon 30 calendar days' notice to the Grantee, the Department may terminate the Agreement, in whole or in part, at any time if (a) the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement; (b) the Grantee becomes insolvent or files for bankruptcy; (c) the Grantee fails to apply provided funds as intended under this Agreement; or (d) statutory changes affecting the Program under which these funds were provided render funding with this Agreement impossible. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. In the event that the Department provides notice of termination based on the Grantee becoming insolvent or filing for bankruptcy, or the Grantee failing to apply provided funds as intended under this Agreement, the Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Grantee specifically consents to relief from the automatic stay of 11 U.S.C. § 362(a) with respect to any reconsideration proceeding and the Department's authorizations related thereto. The Department shall not terminate the Agreement until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final.

Should the Department terminate the Agreement, in whole or in part, because the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement, or because there are statutory changes affecting the Program under which these funds were provided that render funding with this Agreement impossible, the Department will exercise best efforts to seek funds to be used to defray the costs of shutting down and the Grantee need not repay any funds already paid to the Grantee if such funds represent Eligible Project Costs that the Grantee has incurred. The Grantee shall repay the Department for all funds paid associated with this Agreement if the Grantee fails to apply provided funds as intended under this Agreement. If the Grantee becomes insolvent or files for bankruptcy, it shall immediately notify the Department and ensure that the Department is listed as a creditor in any bankruptcy proceeding pursuant to the Department's ownership interest, as provided for in the Agreement, recognizing the property interest of the Commonwealth established in § 33.2-1600(F) of the *Code of Virginia* (1950), as amended. If the Department terminates the Agreement, in whole or in part, due to the Grantee's insolvency, the Grantee shall repay the Department all funds paid associated with this Agreement.

Section 9.5 Delays caused by Force Majeure Events during the Work shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure Event, as determined by the Department, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the Department may terminate this Agreement at its discretion. Force Majeure Events occurring during the Department's Interest Period will automatically result in day-for-day extension to the Department's Interest Period. Force Majeure Events occurring during construction will result in day-for-day extension to the Project Schedule unless agreed otherwise by the Parties.

The Grantee shall notify the Department within 5 working days of its opinion that a Force Majeure Event has occurred, unless good cause is shown for delay of communication at the

sole determination of the Department. The Grantee will further provide the Department with information to support its opinion. The Department will complete its review based on the information submitted by the Grantee within 10 working days of receipt of such information, and notify the Grantee of its opinion. Both Parties must agree that a Force Majeure Event has occurred before an event will be deemed a Force Majeure Event.

Section 9.6 All reimbursement of funds granted by the Department under any Article of 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 payment is made by the Department to date of repayment by the Grantee.

ARTICLE 10
ASSIGNMENT

Section 10.1 The Grantee may not assign any portion of this Agreement without the prior written approval of the Director.

ARTICLE 11
TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 11.1 This Agreement shall be effective immediately upon its execution by the last signing Party.

Section 11.2 This Agreement, any amendments to this Agreement, and the Grantee's application to receive the funding on which this Agreement is based, constitute the entire and exclusive agreement between the Parties relating to all specific matters covered herein. All other prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked, and rendered ineffective for any purpose except for any Letter of No Prejudice issued by the Department, which shall remain in effect.

Section 11.3 This Agreement may be altered, amended, or revoked only by an instrument in writing signed by both Parties.

ARTICLE 12
NOTICES AND DESIGNATED REPRESENTATIVE

Section 12.1 All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by

U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a Party to the other Party.

Department: Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
Attention: William S. Pittard, Chief Financial Officer
steve.pittard@drpt.virginia.gov

With copies to: Jeremy Latimer, Rail Transportation Programs Administrator
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
jeremy.latimer@drpt.virginia.gov

Department or Rail and Public Transportation Counsel
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
lwright@oag.state.va.us

Grantee: _____

Designated Representatives:

Department: Jeremy Latimer, Rail Transportation Programs Administrator
Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
jeremy.latimer@drpt.virginia.gov

Grantee: _____

ARTICLE 13
NON-DISCRIMINATION

Section 13.1 In the solicitation or awarding of any contracts directly related to this 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.

Section 13.2 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, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment; (b) the Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and (c) 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.

ARTICLE 14
MISCELLANEOUS PROVISIONS

Section 14.1 The Grantee shall at all times observe and comply with all federal, state and local laws, regulations, ordinances, orders, and decrees applicable to the Work or subsequent operation. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.2 Data or information provided by the Grantee to the Department that is protected under federal or state law, or otherwise deemed by the Grantee and the Department as proprietary, will be marked by the Grantee on each document in accordance with the provisions of the Virginia Freedom of Information Act prior to its submission. The Department shall hold and protect said documents identified by the Grantee as proprietary in accordance with law

Section 14.3 The Grantee shall maintain all books, documents, papers, accounting records, and any other evidence, showing actual time devoted and supporting the cost incurred. Such books, documents, papers, accounting records, etc. shall be kept in accordance with commonly accepted business/industry accounting procedures. Such information shall be made available at the Grantee's offices at all reasonable times during the Agreement period and for a period of three years from the date of final payment and acceptance by the Department to the Grantee for audit and inspection. The Grantee shall maintain records of the performance levels reported to the Department for three years after the Department's Interest Period completion date. Copies of such information shall be furnished to the Department upon request. The Department shall have the absolute right to audit to determine compliance with the terms of this Agreement.

Section 14.4 The Grantee shall be responsible for all damage to life and property due to its activities and those of its Contractors, subcontractors, agents, and employees in connection with the Work performed under this Agreement. The Grantee will obtain insurance to cover this risk, and name the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents, and employees of these entities as additional insureds on insurance policies. Acceptance of the Work by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement. Further, it is expressly understood that the Grantee shall indemnify, defend, and hold harmless the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents, and employees of these entities, from and against all damages, claims, suits, judgments, expenses, actions, and costs of every name and description, including but not limited to reasonable attorney's fees and costs, arising out of or resulting from any act or omission in the performance by the Grantee and its Contractors, subcontractors, agents, and employees, of the Work covered by this

Agreement and, if applicable, the subsequent operation of rail service over this Project. The obligations of this section shall survive the termination or completion of this Agreement.

Section 14.5 During the performance of this 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 or subcontractor in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 *et seq.* of the *Code of Virginia* (1950), as amended, 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.

Section 14.6 No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this Agreement.

Section 14.7 This Agreement shall, in all respects, be governed by the law of the Commonwealth. Nothing in this Agreement shall constitute a waiver of sovereign immunity. Any legal action concerning this Agreement shall be brought in the Circuit Court of the City of Richmond, Virginia.

Section 14.8 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the Parties.

Section 14.9 This Agreement, when properly executed, shall be binding upon the Parties and their respective successors and assigns.

ARTICLE 15
UNAUTHORIZED ALIENS

Section 15.1 The Grantee certifies that it does not, and that it and its Contractors shall not, during the performance of this contract knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the "Act"). 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.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BY: _____
Jennifer Mitchell
Director

DATE: _____

STATE OF _____
CITY/COUNTY OF_____, to wit:

Subscribed and sworn to before me this ___ day of_____, 20___ by _____.

_____
Notary Public

Notary registration number _____

My commission expires:

_____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

STATE OF _____
CITY/COUNTY OF_____, to wit:

Subscribed and sworn to before me this ___ day of_____, 20 ___ by _____.

_____
Notary Public

Notary registration number _____

My commission expires:

Attachment A - Commonwealth's Interest
Table for Use in Calculating Reimbursement
(Provided three year carload usage performance requirement has been fulfilled)

A	B	C	D	E	F	G
Year	Year Beginning Non-Use for Intended Purpose	Total Amount of Department's Reimbursement	Percentage of Remaining Department Interest	Amount of Reimbursement	Annual Interest Rate	Total Recovery
	(Yes)			(C x D)		E + (E x F)
1	*	**	100%	***	***	***
2	*	**	93.33%	***	***	***
3	*	**	86.66%	***	***	***
4	*	**	79.99%	***	***	***
5	*	**	73.32%	***	***	***
6	*	**	66.65%	***	***	***
7	*	**	59.98%	***	***	***
8	*	**	53.31%	***	***	***
9	*	**	46.64%	***	***	***
10	*	**	39.97%	***	***	***
11	*	**	33.30%	***	***	***
12	*	**	26.63%	***	***	***
13	*	**	19.96%	***	***	***
14	*	**	13.29%	***	***	***
15	*	**	6.62%	***	***	***

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

Attachment B - Project Invoice Page 1

(on letterhead)

(insert date)

(insert name of DRPT Director), Director
Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

Dear *(insert name of DRPT Director)*:

Pursuant to the Industrial Access Railroad Track Agreement executed *(Date of Agreement)*, this letter is to act as invoice for the Commonwealth's portion of the *(name of industry and location)* site Rail Industrial Access Facility. The rail Facility is complete and in use by *(name of serving railroad)*.

Attached please find a copy of (*industry's name)* summary sheet of the paid invoices, as well as copies of these paid invoices. As calculated on the summary sheet, the Commonwealth's amount to be paid is *(Amount to be Paid by the Commonwealth)*. Please remit payment to the following address:

(contact name and address here)

The Employer Identification Number (EIN) for *(name of industry)* is _____.

Sincerely,

(insert name)
(insert title)

Attachments
(*summary sheet and back-up invoices)*

Attachment B - Project Invoice Page 2

Summary Sheet (sample)

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

Attachment C - Certification Letter of Capital Expenditures

(on letterhead)

DATE

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

Dear Director Mitchell:

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

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

Sincerely,

Name and Title

c: Linda Balderson, Rail Preservation and Access Programs Manager

(seal)

The above form was acknowledged before me this ___ day of ____, 20__; by _____(name_____ of __(company)___

My Commission expires _____

_____(Notary Public)_____
REG No. _____

Attachment D - Letter of No Prejudice

Month Day, Year

Name
Title
Company Name
Company Address Line 1
Company Address Line 2

Re: *Project Name*
Letter of No Prejudice

Dear *Name*:

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

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

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

Sincerely,

Name
Director

c: Rail Transportation Programs Administrator