

# DRPT

## Rail Enhancement Fund: Program Procedure Manual



## Table of Contents

1.	General Program Description .....	4
A.	Code of Virginia for Rail Enhancement Fund .....	5
B.	Intended Project Sample Types .....	5
C.	Applicable Standards .....	6
D.	Summary of Process.....	6
1.	Grant Application Process.....	8
A.	Initiation .....	8
B.	Project Evaluation and Selection .....	8
C.	Project Approval .....	9
2.	Contract Development.....	9
A.	Letter of No Prejudice .....	9
B.	Agreement Development.....	9
C.	Notice to Proceed .....	9
	Plan Reviews .....	9
	Written Notice-To-Proceed.....	10
3.	Project Performance and Monitoring .....	10
A.	Project Bid for Construction.....	10
B.	Pre-Construction .....	11
C.	Field Project Construction Reviews .....	11
D.	Reporting Process and Intervals .....	12
	Findings and Recommendations:.....	12
	Using the Schedule and Budget in Project Reviews.....	12
	Use of Contingency during Construction .....	13
	Distribution of Information within DRPT .....	13
4.	Invoicing Process.....	13
A.	Invoice Submission.....	14
B.	Invoice Review .....	14
	Step 1: Invoice Receipt and Initial Review .....	14
	Step 2: Project Manager Invoice Review .....	14
	Step 3: Approval/Rejection for Payment .....	15

5.	Grant Closeout and Post Construction Monitoring .....	15
A.	Project Acceptance .....	15
B.	Funds Analysis .....	15
C.	Tax Identification Forms .....	15
D.	Contingent Interest of Ownership .....	16
	Acknowledgement .....	16
	Documentation .....	16
	Agreement Performance Requirements Schedule .....	16
	Commonwealth’s Interest in Property Acquisitions .....	16

### List of Examples

Example 1-1:	Application Criteria Worksheet.....	8
Example 1-2:	Application Checklist.....	8
Example 2-1:	Letter of No Prejudice .....	9
Example 2-2:	Project Agreement .....	9
Example 2-3:	Project Budget and Schedule .....	10
Example 2-4:	Scope of Work.....	10
Example 2-5:	Plan Review Report .....	10
Example 2-6:	Notice to Proceed .....	10
Example 3-1:	Site Visit Report.....	11
Example 3-2:	Progress Report.....	12
Example 3-3:	SWAM Quarterly Report .....	12
Example 5-1:	Dunning Letter .....	16
Example 5-2:	Expiration of Performance Requirement.....	16
Example 5-3:	Deed of Trust Note.....	16
Example 5-4:	Deed of Trust.....	16

## 1. General Program Description

Under § [33.1-221.1:1.1](#) of the Code of Virginia, the Rail Enhancement Fund (REF) was developed within Department of Rail and Public Transportation (DRPT) in support of the public interest for the preservation and development of railway transportation facilities. The Virginia General Assembly declared it to be in the public interest that the preservation and development of railway transportation facilities are important elements of a balanced transportation system in the Commonwealth.

It further declares it to be in the public interest that the retention, maintenance, improvement, and development of the railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets.

The Director of DRPT administers the Program, subject to the review and recommendation of the and the approval of the Commonwealth Transportation Board (CTB). REF is intended to support the growth of freight and/or passenger rail transportation for purposes of acquiring, leasing, and/or improving:

- railways or railroad equipment
- rolling stock
- rights-of-way
- facilities

REF also aids in assisting other appropriate entities to acquire, lease, or improve:

- railways or railroad equipment
- rolling stock
- rights-of-way
- facilities

CTB supports the use of funds for railroad projects deemed to be important elements of the Statewide Transportation System. Funding is a combination of at least a minimum of 30% cash or in-kind matching contribution from a local source. The other 70% (or balance matched) will be from DRPT funds.

The following organizations are eligible to apply for REF grants:

1. Commuter and Intercity Passenger Rail Operators
2. Freight Rail Operators
3. Private Businesses or Industries that currently utilize rail or are planning to develop railway facilities in the future
4. Regional Authorities
5. Local Governments
6. Non-profit Organizations
7. Or any combination of the above

## A. Code of Virginia for Rail Enhancement Fund

### § [33.1-221.1:1.1](#). Rail Enhancement Fund

A. The General Assembly declares it to be in the public interest that railway preservation and development of railway transportation facilities are an important element of a balanced transportation system of the Commonwealth for freight and passengers and further declares it to be in the public interest that the retention, maintenance, improvement and development of the railways are essential to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets, and there is hereby created in the state treasury a special nonreverting fund to be known as the Rail Enhancement Fund which shall be considered a special fund within the Transportation Trust Fund, hereafter referred to as "the Fund."

B. The Fund shall be established on the books of the Comptroller, and shall consist of dedications pursuant to § [58.1-2425](#) and such funds from other sources as may be set forth in the appropriation act and shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely as provided in this section. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Virginia Department of Rail and Public Transportation or the Director's designee.

C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Commonwealth Transportation Board, the Fund for acquiring, leasing, and/or improving railways or railroad equipment, rolling stock, rights-of-way or facilities, or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way or facilities, for freight and/or passenger rail transportation purposes whenever the Board shall have determined that such acquisition, lease, and/or improvement is for the common good of a region of the Commonwealth or the Commonwealth as a whole. Prior to recommending an allocation of the Fund to the Commonwealth Transportation Board, the Director of the Department of Rail and Public Transportation shall consult with and obtain the advice and recommendations of the Rail Advisory Board established pursuant to § [33.1-391.3:1](#).

D. Projects undertaken pursuant to this section shall be limited to those the Commonwealth Transportation Board shall have determined will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds under this section. Such projects shall include a minimum of 30 percent cash or in-kind matching contribution from a private source, which may include a railroad, a regional authority, or a local government source, or a combination of such sources.

## B. Intended Project Sample Types

The Rail Enhancement Fund Program is intended to assist the following project types:

- Quick turn around, high impact projects
- Multi-year strategic program leading to a six-year program
- Increase mobility to Virginia Ports
- Preliminary service, engineering, or feasibility study
- Final engineering and design
- Acquisition, lease, or improvement of rights-of-way or facilities
- Environmental mitigation directly related to the project
- Site preparation including grading, drainage, and relocation of utilities
- Acquisition, lease, or improvement of railways, including signal and communications equipment
- Acquisition, lease, or improvement of railroad equipment
- Acquisition, lease, or improvement of rolling stock
- Public involvement expenses, as agreed
- Rail capital renewal

Ineligible scopes for this Program are:

- Railroad Operating Expenses
- Passenger Rail Subsidies
- Projects sponsored by DRPT and matched with state fund

### **C. Applicable Standards**

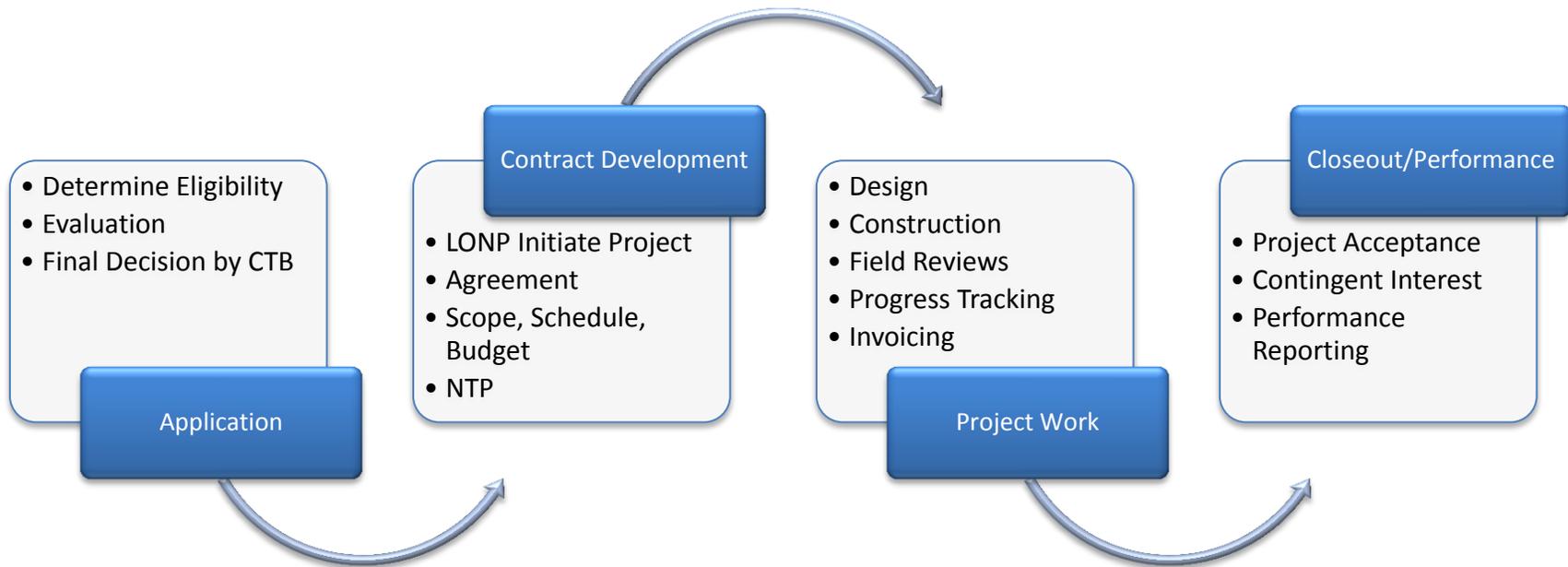
The Applicant must provide Design and Construction in accordance with the American Railway Engineer and Maintenance of Way Association (AREMA), in addition to applicable Grantee's or federal, state, or local law standards.

The applicant also must provide or have provided continuous maintenance in accordance with Grantee's standards (as informed by AREMA recommended practices).

### **D. Summary of Process**

The basic elements of the REF program procedures are outlined in Figure 1, below, and described in further detail throughout this procedures manual.

Figure 1: REF Procedure Summary Flow Chart



## 1. Grant Application Process

### A. Initiation

DRPT prepares announcements of the application period and requests applications. Information is also posted on the DRPT website. DRPT may call upon existing applicants to seek interest and offer assistance necessary to enable the potential applicants to submit a timely application. DRPT may also develop projects for consideration.

Applicants must submit applications within the advertisement period as identified by DRPT. The application must include a comprehensive project description, including the scope of the project, projected schedule and budget, and expected benefits of the project; allowing DRPT to appropriately evaluate the application and understand the project impacts and benefits. The project application criteria worksheet is included as:

#### Example 1-1: Application Criteria Worksheet

Applications are submitted via the Online Grant Application (OLGA) system, located at: <https://olga.drpt.virginia.gov>. (The OLGA website includes instructions for establishing an account and using the online system). OLGA assigns each application a reference number, provides a submission confirmation to applicants, allows applicants to track applications, and stores and backs-up each application electronically to ensure the application is not lost or compromised.

### B. Project Evaluation and Selection

Using the OLGA system, the DRPT Project Manager applies two levels of review to evaluate each application. The first level, includes an evaluation of the application eligibility and completeness. If the application has been submitted by an ineligible organization or is an ineligible project type, the application will not be approved, nor reviewed further for scoring and evaluation. During the first level of review, the DRPT project manager also evaluates the completeness of the application and will request additional information from the applicant, if needed.

The second level of review includes a scoring evaluation using the checklist included in:

#### Example 1-2: Application Checklist

The checklist evaluates the benefits of the project, assigns a prioritization score to each application, and assists DRPT and the CTB with the evaluation and approval process. The checklist includes:

- Benefit Cost Analysis
- Project readiness evaluation
- Match ratio determination
- Assessment of the applicants previous project performance
- Consistency with state, regional, and/or local transportation plans and initiatives
- Determination if the application is a study, construction, or capital renewal project
- Evaluation of both freight and passenger benefits

## C. Project Approval

Based on the application review and checklist criteria, DRPT develops recommendations for the CTB. The CTB will approve and allocate funds to specific projects into the Six-Year Improvement Plan (SYIP).

Once CTB has made selections, DRPT:

- Sends notification to the Applicants of CTB's decision
- Notifies the public of approved projects
- Posts approved projects on DRPT website
- Issues Letter of No Prejudice on specific projects with conditions, if necessary

## 2. Contract Development

### A. Letter of No Prejudice

The letter of no prejudice is an agreement to allow the Grantee to proceed with project development with certain conditions attached. It is mostly used to allow the Grantee to begin work on developing a more detailed Scope, Schedule and Budget; including Preliminary Engineering up to 30%, clearing any environmental work, and providing a project cost estimate. The Letter of No Prejudice is included as:

**Example 2-1: Letter of No Prejudice**

### B. Agreement Development

The DRPT Chief Financial Officer or his designee assigns an agreement reference number to each approved application. Using the further developed scope, schedule and budget, and in coordination with the Attorney General's Office, the DRPT Project Manager prepares a Project Agreement and sends two sets of the Agreement to the Grantee for signature. Once the Grantee signs and returns the Agreement, the Director of DRPT reviews and signs the Agreement. The DRPT Project Manager retains one Agreement set for the master project file and returns the other set to the Grantee. A sample project agreement is included as:

**Example 2-2: Project Agreement**

### C. Notice to Proceed

For the REF, the Notice to Proceed (NTP) is a two-step process; 1) submission and review of project plans, and 2) issuance of the NTP.

#### Plan Reviews

Step 1: The execution of the Agreement serves as the initial NTP by DRPT for the work associated with:

- Completion of any applicable environmental review process
- Completion of preliminary engineering
- Developing the detailed schedule and budget for final design and construction

The Grantee shall, prior to full NTP, provide a detailed Project Budget, Project Schedule, Scope of Work, 30% Preliminary Design plans and any applicable environmental planning. Examples of the detailed project schedule, scope and budget are included as:

**Example 2-3: Project Budget and Schedule**

**Example 2-4: Scope of Work**

The submission of 30% preliminary design plans shall include:

- Plan Title Sheet and Keyplan
- Sheet List and Legend
- Right-of-Way Lines
- Utility Identification
- General Notes
- Typical Sections
- Track Diagrams
- Existing and Proposed Track Centers
- Limits of Construction
- Adjacent Property Owners
- Title Block Information
- Adjacent Structures and Railroad Infrastructure
- Potential or Confirmed Wetlands
- Mileposts and Valuation Stations
- Valuation Map References
- Other Applicable Areas

DRPT shall review and provide written approval of the plan and specification submittal from Grantee. During the plan review efforts, the DRPT Project Manager should review any changes to scope or limits of work different than that described in the Agreement. DRPT will review the plans for completeness and complete the Plan Review Report, include as:

**Example 2-5: Plan Review Report**

Upon the review, if there are items from the plan review requiring additional information, the DRPT Project Manager sends the Plan Review Report with a Request for Plan Revisions and/or additional information to the Grantee for their action. The comments should be made clear as to what actions are expected, and should provide a time frame for responses from the Grantee.

**Written Notice-To-Proceed**

Step 2: Once the plan review is complete, DRPT will issue in writing a second NTP for this work. The Grantee is required to design and construct the project in accordance with the most recently approved Project Budget and Project Schedule. A sample NTP letter is included in:

**Example 2-6: Notice to Proceed**

### **3. Project Performance and Monitoring**

#### **A. Project Bid for Construction**

Once the particular project has been through the Preliminary Engineering (Environmental, Permitting, and Design) phases and when construction documents have been issued and reviewed by DRPT, the Grantee will typically determine whether or not they will accomplish the work with their own forces or

do the work with outside forces. If the Grantee plans to utilize outside forces, they must abide by the procurement and dollar threshold requirements outlined in the DRPT / Virginia Public Procurement Act, as included in the signed Agreement.

Final drawings will be utilized in a pre-bid or pre-construction process. Once DRPT has issued the NTP for construction, and the bid/award process has been accomplished (if applicable), construction of the project would commence. DRPT or their representative(s) should be included in all preliminary documentation and communication concerning the above noted processes. DRPT should also be included on the invitation list for any type of pre-bid or pre-construction conferences where applicable.

## **B. Pre-Construction**

DRPT should be invited to any pre-construction conference scheduled. If one is not scheduled, the DRPT Project Manager should call for a meeting prior to construction. The purpose of the meeting with the Grantee is two-fold. First, it establishes a level of interest in the project, the selected contractor, and the overall project. Second, it enables review of the particular DRPT requirements of the entire pre-construction, construction, post-construction, and close-out processes. This would be the point at which the submitted Scope and Schedule would be discussed, and assess if any changes are needed. DRPT should be made aware of all permitting processes, utility location / re-location schedules, environmental and safety processes, as well as the Contractor's Construction Schedule, phasing, and expected time-tables for accomplishing certain milestones of the project.

Discussions should focus on staying on budget, as well as on time. Any questions concerning these issues should be brought to the forefront, so that action/open items can be addressed and assigned, with definable anticipated resolutions. This will insure that projects can move forward as efficiently and expeditiously as possible for the benefit of all stake holders involved.

The Pre-Construction meeting is also the forum where the following should be discussed:

- Site visits
- Invoice verification
- Provision of backup for invoices
- Monthly project status reports
- Updated SOV
- Project communication and documentation
- Use of contingency (if provided for)

## **C. Field Project Construction Reviews**

The DRPT Project Manager performs a pre-construction site visit for project reporting, if applicable. At reasonable intervals and during major milestones, a representative from DRPT will complete a site visit and prepare a site visit report, included as:

### **Example 3-1: Site Visit Report**

This report will be included in the invoice processing procedure. Major milestones requiring a site visit may include:

- Pre-construction
- Materials on hand
- Payment request
- Post-construction
- Close-out, or
- Any other concern or consideration that might arise

In general, field site visits include verifying items such as:

- Invoice amounts
- Quantities
- Schedule
- Onsite progress vs. project progress reports submitted monthly
- Anticipated completion date

#### **D. Reporting Process and Intervals**

The Grantee must submit project progress reports with every invoice. This report should update the status of the project scope, budget, and schedule. Progress report included as:

##### **Example 3-2: Progress Report**

#### **Findings and Recommendations:**

Random QA/QC reviews of the projects are certainly within the scope and vision of the accountability of DRPT. It is important for the DRPT Project Manager to keep accurate and up-to-date files and other document control proceedings in order for DRPT to have an accurate project history. The DRPT Project Manager shall make particular efforts in examining and documenting the project life cycle.

The Grantee is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to this Agreement. A goal to exceed 42 percent of total eligible grant expenditures is encouraged by the current Executive Order 20 (2014). The Grantee must report SWAM participation at the end of every quarter that the Agreement is authorized, starting from the Agreement's Execution Date to the receipt of final project payment. Further details regarding SWAM information is included under code section § 2.2-4310 of the Code of Virginia, and a sample Grantee quarterly SWAM expenditure report is included as:

##### **Example 3-3: SWAM Quarterly Report**

#### **Using the Schedule and Budget in Project Reviews**

REF and MOU projects have schedule and budget requirements included in the agreements. These documents will show certain project categories and milestones, such as:

- Study Work
- Engineering
- Environmental Planning/Permitting
- Construction
- Signal and Communications

- Project Close-Out

DRPT requires the Grantee to provide regular project updates, usually in the form of the Progress Report, cited above. Any updates to the schedule or budget should be noted in the project progress report and a reason/justification should be provided. The Grantee should also provide an updated schedule and budget. Therefore, the project status report provides a clear comparison between the percent complete of the budget and percent complete of the schedule.

After analysis of the project progress report, the DRPT Project Manager may require additional information regarding the project status. Additionally, during the project site visit, the DRPT Project Manager can review the project work “completed to date” and determine with the Grantee if the percentage complete provided in the project progress report is accurate.

### **Use of Contingency during Construction**

The use of contingency is outlined in MOU and REF agreements. Contingency is to be utilized as the definition of the term implies – “a safeguard against unanticipated, unforeseen, unexpected conditions or changes”. During the project design and preliminary engineering phase, the Grantee shall investigate existing conditions and finalize the scope of the project in a methodical manner to identify as many “knowns” that will be discovered during the construction. The contingency line item is provided for those unforeseen conditions. It is not meant for adding scope to the project.

The Grantees are required, by signed agreement, to seek approval from DRPT for use of the contingency.

### **Distribution of Information within DRPT**

For documentation and distribution of information within DRPT, it is important to document information and provide that documentation to the project file. There are other forms of documentation (i.e. invoice tracking log; release for payment memo, etc) that are provided as part of Project Management internal to DRPT. The document control process should be kept current by the DRPT Project Manager. It is important to keep accurate updates of all logs and status reports, allows the DRPT Chief of Rail Transportation to be informed of the project status and any other open project action items.

## **4. Invoicing Process**

The following invoicing procedure provides a minimum requirement guideline for reviewing and processing invoices. This includes guidance for the review of invoices received from Program Grantees and MOU projects. It has been developed for DRPT Program staff as an interim procedure in order to track, review and administer submitted invoices. The DRPT Project Manager assigned to the respective project is responsible and will take ownership of assuring that the invoice is reviewed and processed within 20 days of receipt. This guidance ensures that an approved invoice amount can be paid within the

required 30 days. The 30-day turn around time (30-day prompt pay) is mandated by the Virginia Public Procurement Act.

### **A. Invoice Submission**

The grantee will submit invoices through the OLGA system. Using the Grants Management system in OLGA, the Grantee will create and submit a new reimbursement request. The Grantee is responsible for choosing the correct project to invoice against, noting the correct invoice amount, and attaching supporting documentation prior to invoice submission. Using OLGA, the Grantee is able to track the status of each reimbursement request during the DRPT review process.

### **B. Invoice Review**

The invoice review process is a coordinated effort between the DRPT Division of Finance and Administration (Finance) and the assigned DRPT Project Manager. The review process has three basic steps:

1. Finance receives and assigns the invoice to the DRPT Project Manager
2. The DRPT Project Manager reviews and approves the invoice
3. Finance batches the invoice for payment by the Virginia Department of the Treasury

A more detailed description of the invoice review process is included below.

#### **Step 1: Invoice Receipt and Initial Review**

After the reimbursement request has been submitted via OLGA by the Grantee, DRPT Finance receives the invoice, assigns a voucher tracking number and reviews the invoice for accuracy and completeness. This first step of review is to make sure that the invoice was accurately submitted by the grantee and is assigned to the correct project, and is not missing major pieces of information such as the backup documentation. Finance then assigns a DRPT Accountant to review the invoice.

The assigned DRPT Accountant reviews the invoice to ensure that the backup documentation and sub-categories of charges correctly add to the total invoice amount. Upon review, the DRPT accountant notes the results of their review and assigns the invoice to the DRPT Project Manager.

#### **Step 2: Project Manager Invoice Review**

Once the invoice is assigned to the DRPT Project Manager, the charges included in the invoice and the backup documentation are reviewed for appropriateness and to ensure that reimbursement regulations are followed. The initial review by the DRPT Project Manager includes items such as the following:

- Confirm a signed agreement and notice to proceed are in place
- Review agreement for terms of invoicing and general requirements of the project
- Confirm invoice matches the project's scope, schedule and budget
- Confirm inclusion of project progress report
- Verify percent of budget expenditure is appropriate with project schedule and progress report

Once the general project and grant agreement details have been reviewed and confirmed, a more detailed invoice review by the DRPT Project Manager is required. The DRPT Project Manager is encouraged to make working notes during invoice review and consider items such as:

- Are the charges appropriate for work necessary to complete the project?
- Are materials, locations and personnel appropriate for project work?
- Are Virginia travel guidelines appropriately applied?
- Is the backup sufficient to detail project costs?
- Are receipts for materials and expenses included where applicable?
- Are timesheets for labor included where applicable?

The DRPT Project Manager is responsible for working with the Grantee to gather additional information or clarification when needed.

### **Step 3: Approval/Rejection for Payment**

Once the DRPT Project Manager has satisfied their review the invoice is either rejected or approved for payment. Rejection of an invoice may occur if inappropriate charges have been found and/or if the invoice needs to be resubmitted due to extensive clarification needed by the Grantee. In either case, the Grantee is encouraged to correct any issues and resubmit the reimbursement request. If the reimbursement request is resubmitted, the invoice review process begins again.

If the charges and invoice documentation are appropriate, the DRPT Project Manager approves the invoice for payment. Once approved for payment, the DRPT Controller provides a final QC of the invoice process – ensuring that the appropriate levels of review have taken place – and releases the invoice for payment by the Virginia Department of the Treasury.

## **5. Grant Closeout and Post Construction Monitoring**

### **A. Project Acceptance**

The Grantee must complete the project according to the approved scope, schedule, budget and agreement. Upon project completion, Grantee has 90 days to submit the final invoice to DRPT. DRPT performs a final site review and processes final payment. Grantee is required to maintain and make available all documentation regarding project cost for a period of three years from the date of final payment from DRPT.

### **B. Funds Analysis**

Upon acceptance and payment of the final project invoice, any unused funds will be returned to the REF fund.

### **C. Tax Identification Forms**

REF program does not require Grantees to submit W-9 tax forms.

## **D. Contingent Interest of Ownership**

### **Acknowledgement**

For each project using DRPT State Funds, DRPT retains its Right of Ownership Interest in the materials of the project for a given period of time.

### **Documentation**

As part of the project closeout, the DRPT Project Manager will send a letter regarding DRPT's Contingent Interest of Ownership to the Grantee, included as:

**Example 5-1: Dunning Letter**

### **Agreement Performance Requirements Schedule**

To develop the contingent interest dollar value portion of the project, DRPT uses the Performance Requirements Schedule as cited above, and included in the project Agreement. This schedule is dependent on the actual results of the performance requirements specified in the Agreement; typically lasting for 15 years.

The Grantee is responsible for updating the Performance Requirement Schedule annually starting the first January 1 after project completion.

At the end of the ownership period, if all requirements have been reached, the DRPT Project Manager prepares an Acknowledgement of Expiration of DRPT's Interest which is signed by the Director of DRPT and sent to the Grantee, included as:

**Example 5-2: Expiration of Performance Requirement**

### **Commonwealth's Interest in Property Acquisitions**

If the project includes property acquisition, the Grantee and DRPT must agree upon and sign a Deed of Trust and a Deed of Trust Note, included as:

**Example 5-3: Deed of Trust Note**

**Example 5-4: Deed of Trust**

# Examples for REF Procedures Manual



# Rail Enhancement Fund

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## Application Criteria Worksheet

Application Information	
Grantee:	
Project Manager:	PM Phone:
PM Title:	PM Email:
PM Mailing Address:	

Project Details		
Project Name:		
Location (VA Locality):	Milepost:	
Owner:	Maintenance:	
Project Description:		
Project Objective and Relationship to Other Initiatives/Organization Goals:		
Potential Project Obstacles/Impacts (Environmental, Permitting, ROW Acquisition, Multi-User Agreements, Etc.):		
Project Provides/Enhances Dual Access:	Yes: <input type="checkbox"/>	No: <input type="checkbox"/>

Example 1-1 – Application Criteria Worksheet

Project Budget	
Planning/Feasibility Analysis/Environmental:	\$
Design/Engineering:	\$
Right of Way Acquisition:	\$
Construction:	\$
<b>Total:</b>	<b>\$</b>
State REF Funds Requested:	\$
Local Match Required:	\$
Match Provider:	Match Status:

Project Budget (By Fiscal Year)	
FY18:	\$
FY19:	\$
FY20:	\$
FY21:	\$
FY22:	\$
FY23:	\$
<b>Total:</b>	<b>\$</b>

Project Schedule		
Task	Start (Month/Year)	End (Month/Year)
Planning/Feasibility Analysis/Environmental:		
Design/Engineering:		
Right of Way Acquisition:		
Construction:		

Example 1-1 – Application Criteria Worksheet

<b>Freight Data</b>	
Current Railcar Demand	
Additional Annual Railcar Demand	
Rail tons per railcar	
Railcars per train	
Freight Rail Route Length (Current)	
Freight Rail Route length (After Project)	
Current Truck Trip Distance	
Rail Crossings Removed	
<b>New Annual Railcar Demand (In addition to Current Demand Reported Above)</b>	
Year 1	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	

Example 1-1 – Application Criteria Worksheet

<b>Passenger Data</b>		
	<b>Amtrak</b>	<b>VRE</b>
Number of Passengers per Year (Current)		
Number of Passenger Trains per Year (Current)		
Passenger Trip Length (Existing, Rail)		
Passenger Trip Length (After Project, Rail)		
Travel Time per Trip (Current, Rail)		
Travel Time per Trip (After Project, Rail)		
Passenger Automobile Trip Length		
Passenger Automobile Trip Time		
Number of Rail Crossings Removed		
<b>New Annual Passenger Demand (In addition to Current Demand Reported Above)</b>		
	<b>Amtrak</b>	<b>VRE</b>
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
Year 8		
Year 9		
Year 10		
Year 11		
Year 12		
Year 13		
Year 14		
Year 15		

# Rail Enhancement Fund

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## 2015 Policy Goal Application Checklist

DRPT staff will evaluate and prioritize Rail Enhancement Fund applications based on the following policy goals:

PROJECT NAME:

APPLICATION ID:

PROJECT PRIORITIZATION CRITERIA CAPTURED:

PROJECT SUMMARY:

EVALUATION SUMMARY:

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- 1. Prioritization should be considered for projects where project benefits exceed the total project cost in the benefit-cost analysis.**
  - Does the project pass the Rail Enhancement Fund BCA minimum threshold?
  - Does the project fall within the parameters of Article X, § 10 of the Code of Va.?
  - Does the benefit/cost ratio, when considering total project costs, indicate that the project is a worthwhile investment for the Commonwealth as compared to other projects seeking REF grants?
  - Is the total project cost less than total project benefits?
- 2. Prioritization should be considered for projects that are ready for construction.**
  - Does the project include firm completion dates?
  - Are the project schedule and milestones available and achievable?
  - Has there been a feasibility study, preliminary engineering, or permitting submittals?
- 3. Prioritization should be considered for projects which leverage public or private funds for a match greater than the required 30% match.**
  - Does the REF investment synergize or support other public or private funding sources?
  - Does the application have a match greater than the required 30% match?
- 4. The Department will maintain a contingent interest value and ability to claw-back funds if public benefit is not achieved.**
  - Has the project sponsor performed well on previous REF and DRPT projects?

## Example 1-2: Application Checklist

- Were those projects on-time, on-budget, and completed safely?
- 5. Prioritization should be considered for projects which align with the Statewide Rail Plan, and other appropriate state, regional, or local plans.**
  - Is the project included in the DRPT Statewide Rail Plan?
  - Is the project included in, or align with, an appropriate local, regional, state, or federal plan?
- 6. Prioritization should be considered for projects which benefit both freight and passenger service in corridors where both types of rail service exist.**
  - Does the project link to local transit systems for passengers or to domestic or international supply chains for freight?
  - Does the project support supply chain competitiveness?
  - Does the project provide both passenger and freight benefits in corridors where both passenger and freight service coexist?
  - Does the project support employment retention or growth?
- 7. The CTB will allow up to 25% of the Rail Enhancement Fund to fund planning and preliminary engineering efforts.**
  - Does this project have achievable cost estimates and completion dates?
  - Does this project include appropriate environmental and regulatory analysis?
  - What are the schedules and requirements of necessary or desirable permits?
- 8. The CTB will consider State of Good Repair projects, or “capital renewal” projects, for funding if the Department determines a net benefit to the Commonwealth.**
  - Does this project contribute to the State of Good Repair of critical assets?
  - Does this project reduce delays, increase reliability or speed, or enhance safety?
- 9. The CTB will consider projects which use the federal TIGER grant guidelines as an alternative benefit-cost analysis for unique, large, or multi-state projects, if the Director of the Department pre-approves the application for this benefit-cost analysis.**
  - Does the Rail Enhancement Fund benefit-cost analysis capture the complexity of this project?
  - Does the project involve other private, local, state or federal initiatives?

Example 2-1: Letter of No Prejudice



## COMMONWEALTH of VIRGINIA

Jennifer L. Mitchell  
Director

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
600 EAST MAIN STREET, SUITE 2102  
RICHMOND, VA 23219-2416

(804) 786-4440  
FAX (804) 225-3752  
Virginia Relay Center  
800-828-1120 (TDD)

Date

Grantee Project Manager

PM Title

Grantee Organization

Street Address

City, State Zip

RE: Letter of No Prejudice - Rail Enhancement Funding Agreement **Project Number**

Dear **Grantee Project Manager**:

The Department of Rail and Public Transportation (“Department”) is in receipt of your email request on **Date** for a Letter of No Prejudice (LONP) for the **Project Name** project, as set out in your REF application number **Application Number**, dated **Date** (“Project”).

Although the Rail Enhancement Fund Grant Agreement for this Project has not been executed, the importance of the timing of this project dictates that work begins. Accordingly, you are hereby authorized by the Department to incur expenses towards the Project beginning **Date**. Allowable expenses incurred towards this Project will be eligible for reimbursement when the Agreement is executed and the Notice to Proceed is issued by the Department. However, if for some reason the Agreement is not executed or the Notice to Proceed is not issued, the Department has no obligation to reimburse any expense that may have been incurred.

Members of my staff will work with the Office of the Attorney General to develop an agreement which will include all of the conditions and requirements of the grant program. It is the Department’s goal to provide this Agreement to you within the 30 days of receiving acceptable versions of the detailed scope, schedule and budget.

*The Smartest Distance Between Two Points*

*[www.drpt.virginia.gov](http://www.drpt.virginia.gov)*

Example 2-1: Letter of No Prejudice

Example 2-1: Letter of No Prejudice

Please contact Jeremy Latimer, Rail Grant Administrator, at (804) 225-4016 should you have any questions.

Sincerely,

Jennifer Mitchell  
Director

Example 2-2: Project Agreement

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
RAIL ENHANCEMENT FUND MULTIPLE YEAR GRANT AGREEMENT**

**GRANTEE:** [Click here to enter text.](#)  
**PROJECT:** [Click here to enter text.](#)

**AGREEMENT NUMBER:** [Click here to enter text.](#)

**APPLICATION NUMBER:** [Click here to enter text.](#)

**RAIL ENHANCEMENT FUND MULTIPLE YEAR GRANT AGREEMENT**

**Agreement Number: [Click here to enter text.](#)**

This Rail Enhancement Fund Multiple Year Grant Agreement (“Agreement”) for [Click here to enter text.](#) is made and executed on \_\_\_\_\_, 20\_\_ by and between the Virginia Department of Rail and Public Transportation (“Department”) acting by and through its Director, and the [Click here to enter text.](#) (“Grantee”) (collectively, the “Parties”).

**RECITALS**

WHEREAS, the Grantee proposes to [Click here to enter text.](#) as set out in its Application dated [Click here to enter a date.](#) (“Project”); and

WHEREAS, in accordance with § 33.2-1601 and § 58.1-2425 of the *Code of Virginia* (1950), as amended, the Commonwealth Transportation Board (“CTB”), on [Click here to enter a date.](#), approved funding for the Project, determined the Project is for the common good of a region of the Commonwealth of Virginia (“Commonwealth”) or the Commonwealth as a whole, and determined that the Project will result in public benefits to the Commonwealth or to a region of the Commonwealth that are equal to or greater than the investment of funds; and

WHEREAS, the Project provides public benefits by enhancing the movement of passengers and/or freight by rail, reducing highway congestion, and promoting fuel efficiency as a part of an integrated transportation system; and

WHEREAS, the Grantee acknowledges that this grant is to fund only [Click here to enter text.](#) and the direct costs associated with this construction, and that the funding shall not be used for any other purpose; and

WHEREAS, the Grantee understands and acknowledges that the Department shall have a contingent interest in the Work produced pursuant to this Agreement commensurate with the investment of grant funding awarded in this Agreement; 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 SWAM solicitation, procurement of services as specified in § 2.2-4302.2 of the *Code of Virginia*, unless the Work is done by the Grantee’s own forces.

## Example 2-2: Project Agreement

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

### DEFINITIONS

**Carloads** mean the total number of revenue rail cars handled by the Grantee in this Project during the Department's fiscal year from July 1 through June 30.

**Container** means a standardized intermodal freight cargo unit that can be loaded onto ships, railroad cars, and trucks. There are several different common standard lengths and heights, with approximate dimensions of 20 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.

**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.

**Eligible Project Cost** means a cost directly associated with the Work.

**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, for the purpose of the statutory match for this Project, a contribution of at least 30 percent cash or in-kind 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.

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

**Monthly Progress Report** means a monthly written progress report including any changes or updates to the Project Schedule, Project Budget, and information as provided in Attachment A.

**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 15-year period of the Department's contingent interest in the completed Work.

## Example 2-2: Project Agreement

**Project Benefit** means the public benefit to the Commonwealth which is described in Article 3 of this Agreement, as well as the public benefit of contributing to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets through the establishment of a viable statewide integrated transportation system which has a rail system with the capability of carrying increased amounts of freight and passengers.

**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.

**Project Invoice** means the form provided by the Department to the Grantee to use for submission for reimbursement of Eligible Project Costs incurred and paid by the Grantee. This form is Attachment B.

**Project Schedule** means the milestone schedule for completing the Work as agreed to by the Parties.

**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.

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

### ARTICLE 1 SCOPE OF WORK, BUDGET, AND MILESTONE SCHEDULE

**Section 1.1** The Work, by year, is as follows:

A. Fiscal Year 20[Click here to enter text.](#):

1. Development of final Project Scope, Project Budget, and Project Schedule for the Work for approval by the Department for [Click here to enter text.](#).
2. The list of Work to be accomplished is as follows:
  - a. [Click here to enter text.](#)

B. Fiscal Year 20[Click here to enter text.](#):

Example 2-2: Project Agreement

1. Development of final Project Scope, Project Budget, and Project Schedule for the Work for approval by the Department for [Click here to enter text.](#)
2. The list of Work to be accomplished is as follows:
  - a. [Click here to enter text.](#)

**Section 1.2** The initial Project Budget and Project Schedule as an estimate at date of Agreement are as follows:

Total Project Budget	<a href="#">\$enter text.</a>
Maximum Department Participation:	<a href="#">\$enter text.</a>
Grantee Contribution at a minimum of <a href="#">Click here to enter text.</a> percent of Project Budget:	<a href="#">\$enter text.</a>

It is agreed that the maximum funding for reimbursement by the Department as provided for in its Fiscal Years 20[Click here to enter text.](#) through 20[Click here to enter text.](#) Program of Projects shall be as follows:

<u>Fiscal Year 20</u> <a href="#">Click here to enter text.</a>	<a href="#">\$enter text.</a>
Maximum Department Participation:	<a href="#">\$enter text.</a>
Grantee Contribution at a minimum of <a href="#">Click here to enter text.</a> percent of Project Budget:	<a href="#">\$enter text.</a>

<u>Fiscal Year 20</u> <a href="#">Click here to enter text.</a>	<a href="#">\$enter text.</a>
Maximum Department Participation:	<a href="#">\$enter text.</a>
Grantee Contribution at a minimum of <a href="#">Click here to enter text.</a> percent of Project Budget:	<a href="#">\$enter text.</a>

Amounts not spent in Fiscal Years 20[Click here to enter text.](#) through 20[Click here to enter text.](#) shall be carried over into subsequent years, so that the entire [\\$Click here to enter text.](#) is available for reimbursement for Eligible Project Costs. The Grantee shall have two years from the last multiple year date of allocation of funds by the CTB to complete the Work and final invoice the Department. In the event that grant funding is not available to fulfill the multiple year Agreement, the Grantee shall have two years from the last date of allocation of funds by the CTB to complete the funded portion of the Work and final invoice the Department. It is understood that the initial Project Budget is an estimate as of the date of contracting only, and may be lower or higher by the time of construction and/or completion of construction. The Grantee acknowledges that the Commonwealth's share of the Project Cost cannot exceed the amount allocated by the CTB.

**Section 1.3** The Grantee is responsible for constructing or having the Project proposed under the application constructed. In the event that the Grantee is not performing the Work as described in Sections 1.1.A and 1.1.B[Add sections above.](#), the plans and specifications being performed by others shall be approved by the Grantee and the Department. All Work requiring professional or nonprofessional services shall be acquired in accordance with § 2.2-

## Example 2-2: Project Agreement

4302.2 of the *Code of Virginia*, a copy of which is attached as Attachment F, unless the Work is performed by the Grantee's own forces.

**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 Rail Enhancement Fund shall be reduced by the amount of the subsequent allocation. The Grantee will notify the Department of any such subsequent allocation within 30 calendar days of becoming aware of the allocation. 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. If the Work can be completed as described in Article 1 and the Department approves, the Grantee may revise the Project so that total Project expense does not exceed the Project Budget. However, the Project Benefit shall remain unchanged.

**Section 1.6** A Monthly Progress Report, as provided in Attachment A, will be submitted to the Department by no later than the 10th day of the following month. The Report will make particular reference to progress towards completing milestones contained in the Project Schedule.

**Section 1.7** Funding is subject to annual appropriation by the General Assembly and allocation by the CTB.

**Section 1.8** 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 execution of this Agreement, the Department approves the initial Project Scope specified in the Grantee's application. The Grantee may incur Eligible Project Costs from the date of execution of this Agreement to support the Work specified in Sections 1.1.A.1 and 1.1.B.1 **Add sections above.** approved by the Department prior to reimbursement. The Department does not make any warranty as to the accuracy or suitability of the information submitted, nor does the Department's approval 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 Sections 1.1.A.2 and 1.1.B.2 **Add sections above.** until the Department has issued in writing a Notice to Proceed for this Work. Prior to issuing the Notice to Proceed, the Grantee must submit a final Project Scope, Project Budget, and Project Schedule for the Work to the Department for approval.

## Example 2-2: Project Agreement

**Section 2.3** In the event the Grantee desires to perform the Work specified in Sections 1.1.A.2 and 1.1.B.2 **Add sections above.**, prior to receiving Notice to Proceed from the Department, the Grantee shall formally request a Letter of No Prejudice from the Department (Attachment C). The costs for such Work will only be considered Eligible Project Costs if the costs are incurred after issuance of the Department's Letter of No Prejudice and upon the issuance of Notice to Proceed. However, nothing shall obligate the Department to reimburse the Grantee for any portion of the cost of such Work in the absence of the Department's Letter of No Prejudice (if applicable), executed Agreement, and Notice to Proceed.

**Section 2.4** The Department reserves the right to propose or 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 2.5** The Grantee shall design and construct the Project according to the most recently Department-approved Project Scope, Project Budget, and Project Schedule.

**Section 2.6** The Grantee shall inspect or shall have inspected the Work to:

- A. Ensure that it complies with the contract documents;
- 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 2.7** If the Grantee, the Department, or inspectors duly authorized to uphold applicable federal, state, and local laws regarding construction and operating practices, determine that any material or construction is not in accordance with the Grantee's standards in accordance with the American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards, or any applicable federal, state, local law, or regulation, 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. The Department encourages that the iron, steel, and manufactured goods used in the Project be produced in the United States.

**Section 2.8** The Department may take any action, including the inspection of the Project site and all books and records of the Grantee, and 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 2.9** 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. The Department representatives will not enter the Grantee's right-of-way without the Grantee's provision of any necessary protection from train movements. The Grantee will promptly provide such protection when the Department

## Example 2-2: Project Agreement

arrives for access. The Department's representatives will comply with all safety rules and regulations of the Grantee, and safety instructions from the Grantee's representatives. If requested by the Grantee in writing, the Department and any of its agents who perform inspections will complete the Grantee's standard right-of-entry form prior to entering the Grantee's property, but entry shall be provided at no cost to the Department.

**Section 2.10** The Grantee shall submit to the Department monthly by the 10th day of every month from the date of this Agreement, to the Department, in writing or electronically, a report detailing information relating to the Project concerning the Grantee's Carload and Container performance, and, if applicable, revenue intercity or commuter rail passengers or cars carried over the rail line. The purpose of this report is solely to assist the Department in reporting performance trends in the Commonwealth. Reporting will continue throughout the Department's Interest Period.

**Section 2.11** All efforts relating to reporting monthly performance under this Article shall be non-auditable and at the Grantee's expense.

### ARTICLE 3 SPECIAL CONDITIONS

**Section 3.1** Where the Grantee is acting as overall Project manager, employee payroll and indirect costs may be charged directly to the Project. Reasonable Project charges for the employees, their rates and surcharges are eligible for approval by the Department.

**Section 3.2** The Grantee agrees to provide or have provided continuous maintenance, at no cost to the Department, of the Project improvements for the duration of the Performance Period in accordance with the Grantee's standards and 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.

**Section 3.3** 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 the Work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders.

**Section 3.4** 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 charged at the actual cost to the Grantee with no markups.

**ARTICLE 4**  
**REIMBURSEMENT OF GRANTEE**

**Section 4.1** The Grantee shall render Project Invoices no more frequently than once every 30 calendar days for reimbursement of Eligible Project Costs. Each Project Invoice must reflect the percentage of financial participation agreed to by the Department and the Grantee in Article 1.

**Section 4.2** Project Invoices shall be submitted using the forms and summary provided as Attachment B of this Agreement. Upon approval by the Department for payment, Project Invoices will be paid within 30 calendar days. Project Invoices shall be accompanied by the most recent Monthly Progress Report.

**Section 4.3** Project Invoices or line items in invoices 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 reimbursable expenditures approved by the Department.

**Section 4.4** 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 4.5** Reimbursement for any items of Work found not to be in accordance with the agreed Work or any applicable federal, state, or local law, or regulation by the Department in its final audits shall be repaid to the Department by the Grantee within 60 calendar days of notice by the Department of items disapproved..

**Section 4.6** The Grantee is responsible for payment of all Contractors. The Grantee shall attach to each Project Invoice copies of Contractor's paid invoices and relevant backup information.

**ARTICLE 5**  
**COMPLETION AND ACCEPTANCE**

**Section 5.1** It is the responsibility of the Grantee to notify the Department in writing that the final invoice for the Project has been submitted to the Department for reimbursement. By marking the final Project Invoice "Final" the Grantee is certifying in writing that the Work has been completed.

**Section 5.2** The Department shall have 60 calendar days after Grantee's certification of completion of the Work in which to provide in writing final acceptance of or rejection of any portion of the Work.

**Section 5.3** If no rejection is sent by the Department within the 60 calendar-day period, the Performance Period begins the next July 1.

## Example 2-2: Project Agreement

**Section 5.4** If the Work is accepted by the Department, the final Project Invoice shall be paid within 30 days of acceptance.

**Section 5.5** Sixty calendar days after payment of the final Project Invoice, the Department will withdraw any remaining Department funds.

**Section 5.6** 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 5.7** If the Department rejects any portion of the Work, the Grantee shall have 30 days from the date of the written rejection notice to submit a written plan for remedying any identified problems with the Work. The problems shall be remedied according to a schedule approved by the Department.

**Section 5.8** 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 6 INTEREST IN COMPLETED WORK

**Section 6.1** The Parties acknowledge and agree that the Department has a contingent interest in ensuring that the improvements created by the Project continue to be operated or used for their intended purpose for the Project Benefit, as well as the public benefit of contributing to the Commonwealth's continued economic growth, vitality, and competitiveness in national and world markets through the establishment of a viable statewide integrated transportation system which has a rail system with the capability of carrying increased amounts of freight and passengers for 15 years after payment by the Department and acceptance of the improvement by the Department. 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 that improvement less depreciation calculated over 15 years on a straight line basis from the date of acceptance of the Project by the Department, and further less any reimbursement paid by the Grantee to the Department over the 15-year Performance Period. This section shall be binding on Grantee's successors and assigns.

**Section 6.2** If within 15 years of the date of payment and acceptance of the improvements pursuant to this Agreement by the Department, the Grantee does not continue to utilize the improvements, which may include but are not limited to, discontinuance of service or abandonment of the improvements, then the Department shall be reimbursed the value of its contingent interest in the improvements as determined in accordance with Section 7.1 plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the time of acceptance. The Grantee, upon written approval of the Director, shall have the right to expand, modify, rearrange, and/or remove

## Example 2-2: Project Agreement

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 15-year period. Any cost involved in the relocation or removal of the Project shall be borne by the Grantee or using business.

**Section 6.3** The Grantee may, with the Director's written approval, purchase, sell or 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 or transfer the Project in sufficient time for the Department to participate in negotiations concerning the preservation of its contingent interest. In the event of sale or transfer of the Project, the Department must be provided with a contingent interest in the Project by the Grantee's successor or assign in accordance with Section 7.1. Such contingent interest must be approved by the Department prior to the sale or transfer. If the Grantee or its successors or assigns purchases the Department's contingent interest, the Grantee or its successors or assigns will reimburse the Department the value of its contingent interest as determined in Section 7.1 plus interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the time of acceptance.

**Section 6.4** The Grantee hereby certifies that it either 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. This section shall be binding on the Grantee's successors and assigns. The Grantee certifies that it has received approvals relative to easements and encroachments that occur as a result of this Project. The Grantee shall not be reimbursed by the Department for any amounts used by the Grantee to acquire or lease real property.

### ARTICLE 7 SMALL, WOMEN, AND MINORITY (SWAM)

**Section 7.1** The Grantee is encouraged to seek and use Small, Women, and Minority ("SWAM") enterprises in relation to this Agreement. A SWAM achievement goal of 43 percent of total eligible grant expenditures is established by execution of this Agreement by the Parties. Information regarding the SWAM section of the *Code of Virginia* can be found in Attachment D.

### ARTICLE 8 TERMINATION

**Section 8.1** The Grantee may terminate the Project 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 8.2** 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

## Example 2-2: Project Agreement

cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided for by law. However, this provision does not constitute a waiver of the Department's sovereign immunity. Furthermore, in such event, the Grantee will not be required to repay any funds that have been provided by the Department pursuant to this Agreement.

**Section 8.3** Upon 30 calendar days' notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement, or the Agreement if funding is complete if at any time it is determined that 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 funding until after the request has been reconsidered but may withhold funds in the interim in the event that initial payment by the Department to the Grantee has not been made. 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 for the Project plus the statutory legal rate of interest as detailed in Section 9.7. 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 serve as a functioning railway transportation facility, the Grantee will reimburse the Department as detailed in Article 7.

**Section 8.4** Upon 30 calendar days' notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement, or the Agreement if funding is complete, 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, (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. 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 funding 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.

**Section 8.5** Should the Project be terminated by the Department because of a lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray the costs of shutting down. 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 should the Grantee fail to apply funds as intended under this Agreement.

## Example 2-2: Project Agreement

**Section 8.6** 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 Performance Period of this Agreement will automatically result in day-for-day extensions to the Performance Period specified in this Agreement. Force Majeure Events occurring during construction will result in day-for-day extensions to the Project Schedule unless agreed otherwise by the Parties.

The Grantee shall notify the Department within five working days of its opinion that a Force Majeure Event has occurred and 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 8.7** 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 9 ASSIGNMENT**

**Section 9.1** The Grantee may not assign any portion of this Agreement without the prior written approval of the Department.

### **ARTICLE 10 TERM, ENTIRE AGREEMENT, AND AMENDMENT**

**Section 10.1** This Agreement shall be effective immediately upon its execution.

**Section 10.2** This Agreement and the application on which it is based and any Amendments thereto constitute the entire and exclusive agreement 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 10.3** This Agreement may be altered, amended, or revoked only by an instrument in writing signed by the Parties.

### **ARTICLE 11 NOTICES AND DESIGNATED REPRESENTATIVE**

Example 2-2: Project Agreement

**Section 11.1** 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 parties.

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](mailto:steve.pittard@drpt.virginia.gov)

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

Nancy C. Auth, Senior Assistant Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, VA 23219  
[nauth@oag.state.va.us](mailto:nauth@oag.state.va.us)

Grantee: [Click here to enter text.](#)  
[Click here to enter text.](#)

Designated  
Representative: Jeremy Latimer, Rail Programs Administrator  
Virginia Department of Rail and Public Transportation  
600 East Main Street, Suite 2102  
Richmond, VA 23219  
[Jeremy.latimer@drpt.virginia.gov](mailto:Jeremy.latimer@drpt.virginia.gov)

Grantee: [Click here to enter text.](#)  
[Click here to enter text.](#)

**ARTICLE 12  
NON-DISCRIMINATION**

**Section 12.1** 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 12.2** 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. 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.

**ARTICLE 13  
MISCELLANEOUS PROVISIONS**

**Section 13.1** The Grantee agrees that its plans will incorporate statewide plans or projects that support freight and/or passenger rail growth or to make every reasonable attempt in its designs not to preclude specified statewide passenger and or freight projects in the future.

**Section 13.2** 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 13.3** 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 prior to its submission. The Department shall hold and protect said documents identified by the Grantee as proprietary in accordance with law. For the purposes of this Agreement, proprietary items are specified in Attachment E.

**Section 13.4** 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 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

## Example 2-2: Project Agreement

performance levels reported to the Department for three years after the Performance 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 13.5** 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. In the event that the Grantee obtains insurance to cover this risk, the Commonwealth, the Department, the Virginia Department of Transportation, and the officers, agents and employees of these entities shall be listed as additional insureds. 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, arising out of or resulting from any negligent act or omission in the performance by the Grantee and its Contractors and subcontractors of the Work covered by this Agreement and, if applicable, the subsequent operation of rail service over the Project, but only to the extent Grantee is indemnified by the passenger operator. The obligations of this section shall survive the termination or completion of this Agreement.

**Section 13.6** 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 in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the *Code of Virginia*, 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 13.7** No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, in this Agreement that is prohibited by Virginia law.

**Section 13.8** This Agreement shall, in all respects, be governed by the laws of the Commonwealth.

## Example 2-2: Project Agreement

**Section 13.9** If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality, validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the Parties.

**Section 13.10** This Agreement, when properly executed, shall be binding upon the Parties and their respective successors and assigns.

### **ARTICLE 14 UNAUTHORIZED ALIENS**

**Section 14.1** 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 (“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.

*This space intentionally left blank*

Example 2-2: Project Agreement

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

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_  
Jennifer Mitchell  
Director

Grantee Name

\_\_\_\_\_  
WITNESS

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_



Attachment B - Project Invoice Page 1

DRPT Voucher: \_\_\_\_\_

Department of Rail and Public Transportation  
Reimbursement Form

Organization Name: \_\_\_\_\_  
EIN: \_\_\_\_\_

Invoice Date \_\_\_\_\_  
Invoice # \_\_\_\_\_

New Address, If applicable  
\_\_\_\_\_  
\_\_\_\_\_

Project Agreement Name: \_\_\_\_\_  
Project Number: \_\_\_\_\_

	Federal	State	Local	Total
Total Contract Amount	\$ -	\$ -	\$ -	\$ -
Total of Previous Payments	\$ -	\$ -	\$ -	\$ -
Total Expended This Period	\$ -	\$ -	\$ -	\$ -
Balance Remaining After This Invoice	\$ -	\$ -	\$ -	\$ -

Total Reimbursable Amt for this Invoice

*I certify that the grantee agency has incurred expenses in accordance with the project agreement and that these funds have not been previously requested.*

Grantee Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_

Note: Percentage calculations are rounded to the nearest dollar.

**THIS AREA FOR DRPT USE ONLY:**

Grant Manager Signature \_\_\_\_\_ Date \_\_\_\_\_

Check here to close project after this request. \_\_\_\_\_

Form# DRPT06302003F

Example 2-2: Project Agreement

**Attachment B - Project Invoice Page 2**

Payment Number	Total Expended This Period	Date of Request	Previous Total
1	\$ -		\$0.00
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Example 2-2: Project Agreement

**Attachment B - Project Invoice Page 3**

**Summary Sheet**

(sample for individual Grantee and/or Contractor invoices within a Project Invoice)

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

Example 2-2: Project Agreement

**Attachment C - Letter of No Prejudice**

*Month Day, Year*

*Name*

*Title*

*Railroad Name*

*Railroad Address Line 1*

*Railroad Address Line 2*

Re: *Project Name*  
Letter of No Prejudice

Dear *Name*:

The Department of Rail and Public Transportation (DRPT) is in receipt of your letter dated *Month Day, Year* in which you requested a Letter of No Prejudice to proceed with the *Project Description*.

Total project costs of \$*Amount* will be shared at *Percent%* DRPT Rail Enhancement funds of \$*Amount* and *Percent%* *Railroad Name* funds of \$ *Amount*.

Although the pre-agreement has not been concluded nor the grant agreement executed, the importance of the timing of this project dictates that work begin. Accordingly, you are hereby authorized to begin incurring expenses towards this Project, pending the execution of a project agreement. Eligible expenses incurred towards this project will be eligible for reimbursement when a project agreement is executed between *Railroad Name* and DRPT. However, if for some reason an agreement is not executed, then DRPT has no obligation to reimburse any expense that may have been incurred. All expense will be subject to audit and reporting requirements, which will be described in the project agreement.

Members of my staff are currently working with the Office of the Attorney General to develop a project agreement which will include all of the conditions and requirements of the grant program. DRPT anticipates providing the project agreement to you within the next 30 days.

Sincerely,

*Name*

Director

## Example 2-2: Project Agreement

### Attachment D - SWAM Information

#### SWAM Code Section

§ 2.2-4310. Discrimination prohibited; participation of small, women-, minority- and service disabled veteran-owned business

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Minority Business Enterprise.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses and businesses owned by women, minorities, and service disabled veterans in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § [15.2-965.1](#), and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports on small, women- and minority-owned business procurement and on service disabled veteran-owned business procurement to the Department of Minority Business Enterprise in a form specified by the Department of Minority Business Enterprise. The Department of Minority Business Enterprise shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women- and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders

## Example 2-2: Project Agreement

unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

E. As used in this section:

“Minority individual” means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. “African American” means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.
2. “Asian American” means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.
3. “Hispanic American” means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.
4. “Native American” means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.
5. “Minority-owned business” means a business that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.
6. “Service disabled veteran” means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under

## Example 2-2: Project Agreement

conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

7. "Service disabled veteran business" means a business that is at least 51% owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

8. "Small business" means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

9. "State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

10. "Women-owned business" means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

Example 2-2: Project Agreement

**Attachment E - Grantee's Proprietary Items**

Example 2-2: Project Agreement

**Attachment F - Section 2.2-4302.2, Code of Virginia**  
**A part of the Virginia Public Procurement Act**

§ 2.2-4302.2. Process for competitive negotiation.

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall

## Example 2-2: Project Agreement

select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § [2.2-4342](#), proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

## Example 2-2: Project Agreement

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.



# Rail Enhancement Fund

---

## Project Scope of Work

**PROJECT NAME:**

**PROJECT ID:**

**PROJECT SUMMARY:**

---

### **Task 1: Task Name**

Include a detailed description of the task, including specific goals, timeline and task budget.

### **Task 2: Task Name**

Include a detailed description of the task, including specific goals, timeline and task budget.

*<<<Repeat for all Tasks associated with project completion>>>*

# Rail Enhancement Fund: Plan Review Report

---

**PROJECT NAME:** Click here to enter text.

**PROJECT ID:** Click here to enter text.

**PE LEVEL SUBMITTED:** 10%  15%  30%  60%  90%  100%

#	DWG. NO./ SPEC. SECT./ PAGE NO.	COMMENT	RESPONSE	DRPT Accepts
				<input type="checkbox"/>



Example 2-6: Notice to Proceed



## COMMONWEALTH of VIRGINIA

Jennifer L. Mitchell  
Director

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
600 EAST MAIN STREET, SUITE 2102  
RICHMOND, VA 23219-2416

(804) 786-4440  
FAX (804) 225-3752  
Virginia Relay Center  
800-828-1120 (TDD)

Date

Grantee Project Manager

Title

Grantee Organization

Street Address

City, State Zip

RE: Review of Final Scope, Budget, and Schedule / Notice to Proceed

Dear Grantee Project Manager:

The Virginia Department of Rail and Public Transportation (the "Department") has completed the review of the Grantee attached final scope, budget, and schedule submission dated Date for the Rail Enhancement Fund Multiple Year Funding Agreement Number Project Number. The following is a summary of the Department's evaluation of the final scope submitted on Date:

- Project name, brief description and location – accepted.

In addition, this letter acts as the official Notice to Proceed ("NTP") for the work with approved Scope, Budget, and Schedule. Eligible expenses for the Construction of the Project Name project may be invoiced against Fiscal Year Year1 and Fiscal Year Year2 funding allocations.

If you have any questions or comments concerning this letter, please contact Jeremy Latimer (804) 225-4016.

Sincerely,

Jennifer L. Mitchell

# Rail Enhancement Fund: Site Visit Report

---

## Project Information

Project Name: [Click here to enter text.](#)

Project Number: [Click here to enter text.](#)

Total Budget: [Amount](#)

REF Budget: [Amount](#)

Expended: [Amount](#)

---

## Site Visit Information

Visit Date: [Enter a date](#)

Report Date: [Enter a date](#)

Site Visit Corresponds with Invoice #: [Click here to enter text.](#)

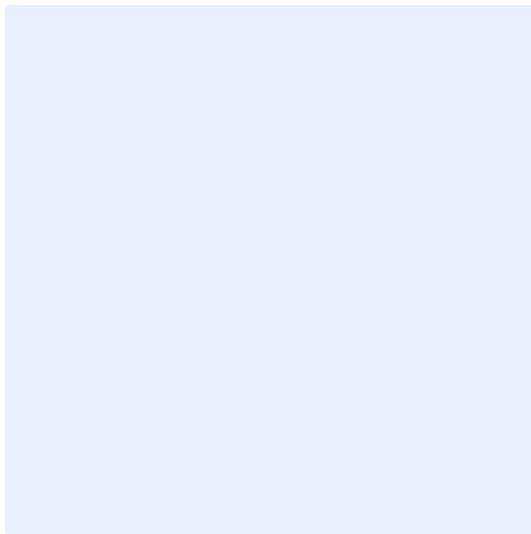
Does Field Progress Match Invoicing?

Yes

No

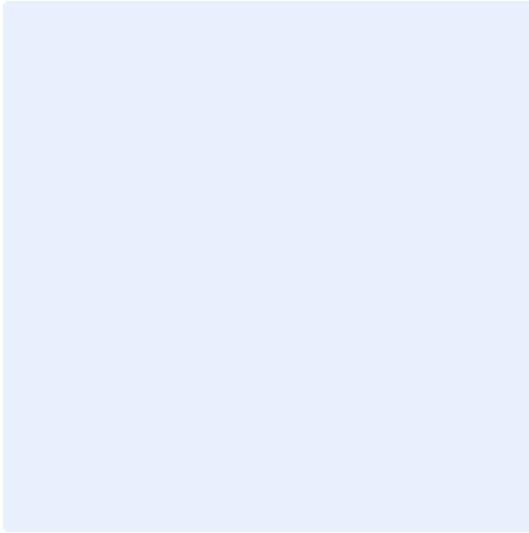
Site Visit Notes:

[Click here to enter text.](#)

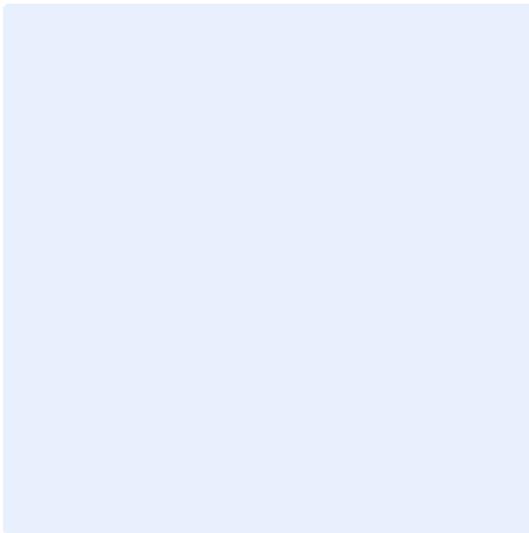


[Picture Caption](#)

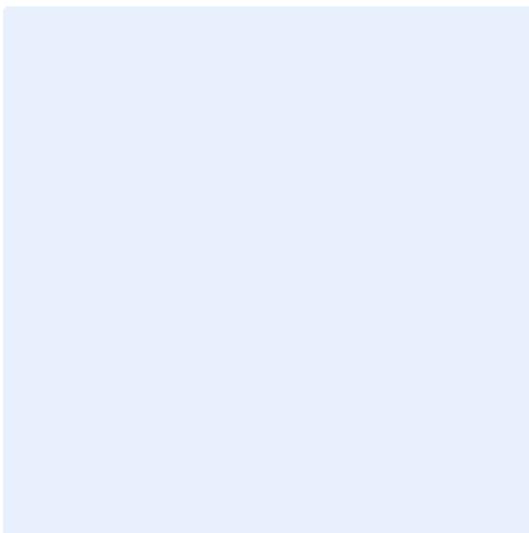
### Example 3-1: Site Visit Report



Picture Caption



Picture Caption



Picture Caption

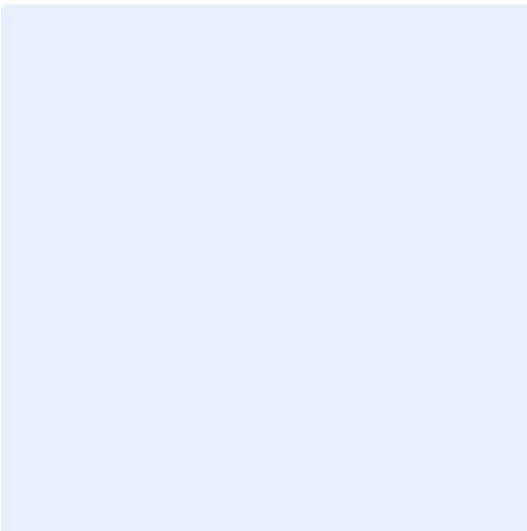
### Example 3-1: Site Visit Report



Picture Caption



Picture Caption



Picture Caption

Example 3-2: Progress Report

Rail Enhancement Progress Report

Date: \_\_\_/\_\_\_/\_\_\_

DRPT Project: Number: \_\_\_\_\_

Grantee Project: \_\_\_\_\_

Project Type:

New Construction \_\_\_ Rehabilitation \_\_\_

Study \_\_\_ Rail Infrastructure \_\_\_

Equipment/Rolling Stock \_\_\_

Signals/Communication \_\_\_

Other: \_\_\_

Reporting Period Range: \_\_\_/\_\_\_/\_\_\_ through \_\_\_/\_\_\_/\_\_\_

**Rail Enhancement Project Funding:**

Total Funds Allocated \$

Total Funds Spent: \$

Project Fund Balance: \$

Percent Spent to date: \_\_\_%

Project is on budget: Yes \_\_\_ No \_\_\_

Minority Business participation this period: Yes \_\_\_ No \_\_\_

Amount spent this period: \$

Total amount spent: \$

**Schedule**

Project is on schedule: \_\_\_

Project is not on schedule: \_\_\_

Project is ≤ 5% behind schedule \_\_\_

Project is > 5% behind schedule \_\_\_

Project is > 10% behind schedule \_\_\_

Percent Project Complete: \_\_\_%

Response plan:

**Milestones Completed**

• Scoping \_\_\_/\_\_\_/\_\_\_

• Construction or Study \_\_\_/\_\_\_/\_\_\_

**Project Issue(s) and Update Narrative:**

1.

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

## Grantee Quarterly SWAM Expenditure Report

**Fiscal Year** \_\_\_\_\_ **Quarter** \_\_\_\_\_

**Agreement Date:** \_\_\_\_\_

**Grantee Name:** \_\_\_\_\_  
**Grant Type:** \_\_\_\_\_  
**Name of Contact Person:** \_\_\_\_\_  
**Title of Contact Person:** \_\_\_\_\_  
**Phone number:** \_\_\_\_\_  
**Email address:** \_\_\_\_\_

*Report only dollars of actual payments to vendors or expenditures of eligible Grantee force work, provided that Grantee.*

**I. Table A:** Total DRPT Grant Expenditures And SWAM Prime Contracting & Purchasing Expenditures

**SWAM PRIME CONTRACTING & PURCHASING EXPENDITURES:** The amount spent with DMBE certified SWAM businesses OR eligible Grantee work force, provided Grantee is a SWAM, for work directly traceable to the fulfillment of an Grantee's contract or purchase order.

Attach lists of vendor names, Federal Tax ID's and payment amounts to the report

A. Total DRPT Grant Expenditures	B. Total Expenditures with Certified MBE	C. Total Expenditures with Certified WBE	D.Total Expenditures with Certified SBE
\$	\$	\$	\$

(MBE) Minority Business Enterprise, (WBE) Women-owned Business Enterprise, (SBE) Small Business Enterprise

**Percentage of SWAM participation for this report period.  $(B+C+D)/A=$**  \_\_\_\_\_

**II. Table B: SWAM Contracting Expenditure Worksheet**

List below the names of contractors, Federal Tax IDs, SWAM designation, Contract Number, and payment amounts to the contractor

Name of Contractor	Federal Tax ID	MBE, WBE or SBE	Description of Work	Contract NO/PO	Dollar Amount
<b>Total Expenditures</b>					

Example 5-1: Dunning Letter



## COMMONWEALTH of VIRGINIA

Jennifer L. Mitchell  
Director

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
600 EAST MAIN STREET, SUITE 2102  
RICHMOND, VA 23219-2416

(804) 786-4440  
FAX (804) 225-3752  
Virginia Relay Center  
800-828-1120 (TDD)

Date

Grantee Project Manager

PM Title

Grantee Organization

Street Address

City, State Zip

RE: Notification of State's Contingent Interest - Rail Enhancement Funding Agreement **Project Number**

Dear **Grantee Project Manager**:

The Department of Rail and Public Transportation (DRPT) has received your final invoice for **Project Name**, **Project Number**, under the Rail Enhancement Fund Program. In accordance with **Section [XX]** of the contract agreement, DRPT has determined that the contingent interest ownership shall be retired over a **XX** year period to fulfill the useful life of the facility/improvements.

Attached is a copy of the Performance Requirement Schedule as developed for this Agreement. As per this schedule, the Commonwealth's interest will be completely retired on **[Month, year]** if all performance criteria are met. If any ownership circumstances change with **Grantee Organization**, **Section [XX]** of the Agreement requires that DRPT be notified and a pathway to resolution be developed. The **Grantee Organization** is responsible to the Commonwealth of Virginia for the value indicated during the project performance life cycle. Per the Agreement, please provide annual updates regarding the actual results of the performance requirement criteria.

*The Smartest Distance Between Two Points*

*[www.drpt.virginia.gov](http://www.drpt.virginia.gov)*

Example 5-1: Dunning Letter

Example 5-1: Dunning Letter

Please contact Jeremy Latimer, Rail Grant Administrator, at (804) 225-4016 should you have any questions.

Sincerely,

Jennifer Mitchell  
Director

*The Smartest Distance Between Two Points*

*[www.drpt.virginia.gov](http://www.drpt.virginia.gov)*

Example 5-1: Dunning Letter

Example 5-2: Expiration of Performance Requirements



## COMMONWEALTH of VIRGINIA

Jennifer L. Mitchell  
Director

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION  
600 EAST MAIN STREET, SUITE 2102  
RICHMOND, VA 23219-2416

(804) 786-4440  
FAX (804) 225-3752  
Virginia Relay Center  
800-828-1120 (TDD)

Date

Grantee Project Manager

PM Title

Grantee Organization

Street Address

City, State Zip

RE: Expiration of Performance Requirement - Rail Enhancement Funding Agreement **Project Number**

Dear **Grantee Project Manager**:

The Department of Rail and Public Transportation (“Department”) is writing to inform you that, as of **Date, Grantee Name** has met its carload requirement as outlined in Rail Enhancement Fund Agreement **Project Number** for the **Project Name** project, (“Project”).

Under Section **XX** of the Agreement, the Commonwealth will retain a contingent interest in the tracks for **XX** years (until year 20**XX**).

Please contact Jeremy Latimer, Rail Grant Administrator, at (804) 225-4016 should you have any questions.

Sincerely,

Jennifer Mitchell  
Director

*The Smartest Distance Between Two Points*  
*[www.drpt.virginia.gov](http://www.drpt.virginia.gov)*

Example 5-3: Deed of Trust Note

DEED OF TRUST NOTE

\$Value

Date

Location

FOR VALUE RECEIVED, the undersigned, **Grantee Name**, a \_\_\_\_\_ corporation, domesticated in the Commonwealth (the “Maker”), promises to pay without offset to the order of the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION (the “Holder”), at Richmond, Virginia, or at such other place as the Holder may from time to time designate in writing, in lawful money of the United States of America, the principal sum of **Amount**, with interest thereon from the date hereof at the rate of eight percent (8%) per annum, not compounded, provided grounds exist under that certain Grant agreement dated the \_\_\_\_ day of \_\_\_\_\_, **Year**, Grant No. **Grant Number**, and in accordance with the terms of that certain Grant.

The happening of any of the following events shall constitute an event of default: (1) the failure to make when due any installment or other payment as required by this Note, the Deed of Trust or the \_\_\_\_\_, whether of principal, interest, late charges or otherwise, and the continuance thereof for \_\_\_\_\_ (\_\_\_) days; (2) the failure (other than a failure to make payments as provided in (1) above) to perform, observe or comply with any of the terms, warranties, covenants, obligations or conditions contained in this Note, the Deed of Trust, the \_\_\_\_\_ or any other obligation of the Maker to the Holder, and the continuance of such failure for more than thirty (30) days after written notice thereof, provided that, if such failure is not reasonably susceptible of cure within such thirty (30) day period, the Makers shall have an additional thirty (30) days to effect such cure so long as the Makers commence such cure within such initial thirty (30) day period and thereafter diligently prosecute such cure to completion within sixty (60) days from the date written notice was first given by the Holder; (3) the termination of, or occurrence of any other event affecting the validity of this Note or the validity and priority of the Deed of Trust; (4) the entry of an order of relief or the filing of a petition by or against any of the Maker, guarantor, endorsers or any other party to this Note or any other person otherwise liable hereon or for the payment hereof (herein called “Party” or collectively the “Parties”) under the provisions of any bankruptcy or insolvency law, or any assignment for the benefit of creditors by or against any Party; and if such order or relief is entered or such petition is filed by anyone other than such Party, such order, relief or petition is not dismissed within sixty (60) days thereafter; (5) the failure of any Party to do all things reasonably necessary to preserve and maintain the value and collectability of any property or collateral securing this Note, including, but not limited to, the payment of taxes and premiums on policies of insurance on the due date without benefit of any grace period; or (6) the failure of any Party to perform any obligation to the Holder hereunder.

Upon the happening of any event of default this Note shall, at the sole option of the Holder, become immediately due and payable without notice to or demand on any Party. Thereupon, the Holder shall have the right, immediately and without notice to any Party or further action by it, to (i) set-off against this Note, all obligations for money or money’s worth owed by the Holder in any capacity to any Party, whether or not due, (ii) exercise all of its rights

### Example 5-3: Deed of Trust Note

pursuant to the terms of the Deed of Trust, and (iii) exercise all of its rights available to it under the law, equity or otherwise. It is intended hereby that all of the rights and remedies of Holder available either pursuant to the terms of this Note, or under the law or otherwise, are cumulative and not exclusive of any other such right or remedy.

The Parties individually and collectively hereby: waive presentment, demand, protest and notice of dishonor, and agree that this Note may be renewed one or more times and any extension or extensions of the time of payment of this Note may be made before, at, or after maturity for periods in excess of the original term of this Note by agreement with any one or more of the Parties without notice to and without releasing the liability of any Party; agree that the Holder may adjust the interest rate payable on this Note or any renewal(s) or extension(s) hereof by agreement with the Makers without notice to and without releasing the liability of any other Party; waive the benefit of all homestead and similar exemptions as to this Note; waive any right which they may have to require the Holder to proceed against any other Party or person or any property securing this Note and agree that their liability hereunder shall not be affected or impaired by the release or discharge of any other Party from liability hereunder, the release or discharge of any collateral securing this Note or by any failure, neglect or omission of the Holder to exercise any remedies of set-off or otherwise that it may have or by any determination that any security interest or lien taken by the Holder to secure this Note is invalid or unperfected; subordinate any and all rights against the Makers and any collateral for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full; agree to pay all costs and expenses incurred by the Holder in connection with the enforcement of this Note or any instrument securing this Note, and/or the collection of the indebtedness evidenced hereby or other sums required to be paid herein or by any instrument securing this Note, and/or the collection of any judgment rendered herein, and/or the preservation or disposition of any property, or the priority of any instrument, securing the payment hereof, and/or the defense of any claim arising out of, or in any way related to, this Note or any deed of trust or security agreement or other instrument securing this Note or related to the making of the loan evidenced hereby, including, without limitation, attorney's fees if this Note is placed in the hands of an attorney for collection, or if, after an event of default, the Holder finds it desirable to secure the services or advice of an attorney with regard to collection hereof or the preservation or disposition of any property securing this Note.

Any failure by the Holder to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other rights at any time.

“Person” includes individuals, corporations, partnerships, and all other entities.

The term “Holder” used herein shall include any future holder of this Note. This Note shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. If this Note is not dated when executed by the Makers, the Holder is hereby authorized, without notice to the Makers, to date this Note as of the date when any portion of the loan evidenced hereby is first advanced. Whenever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such

Example 5-3: Deed of Trust Note

provision or the remaining provisions of this Note. This Note shall apply to and bind each Party's heirs, personal representatives, successors and assigns and shall inure to the benefit of the Holder, its successors and assigns.

This Note is secured by a certain Deed of Trust of even date herewith (the "Deed of Trust") conveying certain real estate in the City/County of \_\_\_\_\_, Virginia, all as more particularly described in the Deed of Trust, to \_\_\_\_\_ and \_\_\_\_\_, Trustees, and which is to be recorded in the Clerk's office of the Circuit Court of the City/County of \_\_\_\_\_, Virginia. This Note may be secured by other collateral.

WITNESS the following signatures and seals:

\_\_\_\_\_ (SEAL)

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

\_\_\_\_\_

Example 5-4: Deed of Trust

DEED OF TRUST

**THIS DEED OF TRUST AND SECURITY AGREEMENT**, made this \_\_\_ day of \_\_\_\_\_, **Year**, by and between **Grantee Name**, a \_\_\_\_\_ corporation, registered in Virginia, to be indexed as grantor (the “Grantor”), and **Director Name**, Director of the Virginia Department of Rail and Public Transportation, or their successor, a resident of \_\_\_\_\_, Virginia as trustee, to be indexed as grantee (the “Trustee”), and Commonwealth of Virginia, Department of Rail and Public Transportation (the “Beneficiary”), provides:

**WHEREAS**, the Grantor has applied for a grant of funds from the Rail Enhancement Fund that are allocated by the Commonwealth Transportation Board of the Commonwealth of Virginia and managed and distributed by the Virginia Department of Rail and Public Transportation, for the purpose of **Description of Project** evidenced by the issuance of Grant No. **Grant Number** dated the \_\_\_ day of \_\_\_\_\_, **Year** (hereafter, the “Grant”)

WHEREAS the Grant provides that the Grantor **Description** from the final payment under the Grant, and if not so operated or maintained, to repay to the Beneficiary a sum equal to the pro-rata share (computed monthly) of all monies received under the Grant;

WITNESSETH: That for and in consideration of the provisions of this deed and of \$1.00 cash in hand paid and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the Grantor does hereby grant and convey unto the Trustee, with GENERAL WARRANTY of TITLE, and English covenants of title, the property described on Exhibit A attached hereto, made a part hereof and recorded herewith, and does hereby grant a continuing security interest as hereinafter provided.

TOGETHER with all improvements thereon, all easements, rights and appurtenances thereunto belonging, and all fixtures, equipment and other personal property now or hereafter attached to, or used in connection with, or adapted for use in the operation of, the above-described property.

All the above-described real and personal property is hereinafter referred to as the “Property”.

In trust to secure the payment of a certain Deed of Trust Note made by the Grantor and payable to the Beneficiary (the “Note”) in the amount of **Amount** with interest thereon, all as provided in the Note.

And further in Trust, to secure the reimbursement to the Beneficiary for any and all costs and expenses incurred in connection with (i) the collection of the Note and (ii) the protection of the Beneficiary’s security rights or remedies under the Note or this Deed of Trust.

So long as there is no default under the Obligations secured hereby or under this Deed of Trust, Grantor shall remain in quiet use, possession and management of the Property, and in the

#### Example 5-4: Deed of Trust

enjoyment of the income, revenue and profits therefrom. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for in event of default and may be exercised independently of or concurrently with any of said remedies.

TO HAVE AND TO HOLD the Property unto the said Trustee and to their use, in fee simple; provided however, that Grantor shall remain in quiet and peaceful possession of the Property so long as there is no default as to either the Obligations or under this Deed of Trust.

1. Grantor's Warranties. Grantor warrants that Grantor is lawfully seized of an indefeasible estate in fee simple, free from all liens and encumbrances, except as set out below, has good right and power to convey the Property, does hereby warrant generally the same and will execute such further assurances as may be requisite.

Liens and encumbrances:

2. Grantor's Covenants. Grantor covenants and agrees as follows:

(A) That Grantor will promptly repay to the Commonwealth the \$4,160,000.00 with interest as provided in the event of default of the Grant as provided for in that Agreement, or portions thereof with interest as Recovery as provided for in the Grant agreement, or as provided in the event that Grantor purchases the property from the Beneficiary as provided for in the Grant Agreement.

(B) That Grantor will, at Grantor's expense, keep all improvements on the Property insured against fire (with extended coverage) for the full replacement cost of the improvements, and with a thirty day notice to Beneficiary of cancellation, and in forms satisfactory to Beneficiary and against such other hazards, casualties and contingencies in such forms and amounts as Beneficiary may from time to time require.

(C) That Grantor will pay, when due, all taxes and assessments, both general and special, now or hereafter assessed against the Property and all improvements; all premiums on insurance of any type which Grantor may be required to carry under the terms of this Deed of Trust; all prior liens or charges against the Property which might become a lien thereon prior to the lien of this Deed of Trust; and all other sums which are required to be paid by Grantor under the terms of this Deed of Trust or under the Obligations secured hereby.

(D) That the Property and its present use, occupancy and operation comply with all applicable laws, rules and regulations; that to the best knowledge of the Grantor there are no suits, inquiries or investigations either pending or threatened involving the Property or its use, occupancy or operation; that the Grantor will keep the Property and all improvements thereon in good repair and fully protected from the elements to the satisfaction of the Trustee and the Beneficiary; will commit or permit no waste thereon and will do or permit no act by which the Property shall become less valuable; will not, without written permission of Beneficiary, remove, demolish, or structurally alter the improvements on the Property to which the proceeds from the heretofore mentioned

Example 5-4: Deed of Trust

Grant No. were used; and will use and operate the Property in compliance with all applicable laws, rules and regulations.

(E) That Grantor will provide at closing a certificate of insurance evidencing fire (with extended coverage) for the full replacement value of the improvements.

(F) That Grantor will not sell or convey the Property or any part of same either directly or indirectly, by operation of law or otherwise, so long as it shall remain subject to the lien of this Deed of Trust unless (a) the purchaser or purchasers shall by a deed duly executed and recorded assume all Obligations under this Deed of Trust and (b) the Beneficiary shall consent in writing to such sale and to the assumption by the purchaser or purchasers of the Obligations secured under this Deed of Trust; provided however, that the Beneficiary shall be under no duty to give such consent, but if such consent is given, it may be upon such terms and conditions as the Beneficiary shall deem appropriate.

**NOTICE . THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.**

3. Substitution of Trustee. Beneficiary shall have the power, to be exercised at any time or times hereafter, with or without cause and with or without notice, to substitute a trustee or trustee in place of the Trustee herein named, by an instrument in 'writing duly executed, acknowledged and recorded among the land records of the jurisdiction where the Property is located, and all the right, title and interest of the Trustee hereunder shall be vested in the trustee named as his successor or successors, who shall have the same powers, rights and duties which the Trustee so superseded had under this Deed of Trust; and that the exercise of this right to appoint a successor trustee, no matter how often exercised, shall not be deemed an exhaustion of said right.

4. Events of Default. Any one or more of the following events shall constitute a default, ('Event of Default'), under this Deed of Trust:

(A) Failure to operate and maintain the Airport, now existing or built in whole or in part as a result of the project funded with Grant No. . as a public use facility for a period of twenty (20) years from the final payment date of this grant agreement, which notification will be sent to the Grantor and become annexed to this Deed of Trust;

(B) Failure to carry out and complete the project funded with Grant No. in accordance with the plans, specification and project narrative as may be revised or modified with the approval of the Beneficiary.

(C) Failure of the Grantor to observe or perform any of Grantor's other covenants, conditions or agreements hereunder;

(D) If Grantor or any maker, endorser or guarantor (collectively, "Party") of an

#### Example 5-4: Deed of Trust

Obligation secured hereby shall be involved in financial difficulties which are evidenced: (i) by filing a petition in bankruptcy or for the adoption of an arrangement under the Bankruptcy Code (as now or in the future amended) or an admission seeking the relief therein provided; (ii) by making an assignment for the benefit of creditors; (iii) by consenting to the appointment of a receiver, custodian or trustee for all or a substantial part of any Party's assets or to the filing of a petition against any Party under said Bankruptcy Code; (iv) by being adjudicated a bankrupt; (v) by the entry of a court order appointing a receiver, custodian or trustee for all or a substantial part of the assets of any Party or approving as filed in good faith a petition filed against any Party under said Bankruptcy Code; or (vi) by the assumption of custody or sequestration by a court of all or substantially all of the assets of any Party, unless the Airport continues to be operated and maintained;

(E) Default under any lien or security interest affecting the Property, either superior or inferior to the liens created by this Deed of Trust, unless the Airport continues to be operated and maintained.

**5. Remedies on Default.** The Beneficiary shall have, but not be limited to, the following remedies on the occurrence of an Event of Default, which remedies are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently, or successively:

(A) The Beneficiary may declare the Obligations secured hereby, and all sums due hereunder, immediately due and payable in full;

(B) The Beneficiary may take whatever action at law or in equity may appear necessary or desirable to collect the amounts due under the Obligations or hereunder or to enforce the observance or performance of the terms, covenants and conditions of this Deed of Trust.

No remedy set forth in this paragraph 5 is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy in this Deed of Trust or now or hereafter existing at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient.

**6. Section 55-60 of the Code of Virginia.** This Deed of Trust shall be construed to impose and confer upon the parties hereto, and the beneficiaries hereunder, all duties, rights and obligations prescribed in Section 55-60 of the Code of Virginia of 1950, as amended, and in effect on the date of this Deed of Trust, are incorporated in this Deed of Trust by short form reference:

Deferred Purchase Money

Example 5-4: Deed of Trust

Exemptions waived

Subject to all (call) upon default.

Renewal, extension or reinstatement permitted.

Any Trustee may act.

Substitution of Trustee permitted.

general circulation in the City or County where the Property or some part thereof may be located, which advertisements need not be successive.

7. Security Agreement. This Deed of Trust, to the extent that it relates to personal property, **is a security agreement** and shall support any financing statement filed showing the Beneficiary's interest as a secured party, lienholder or creditor with respect to any personal property mentioned in such financing statement, and in the event of a default under this Deed of Trust, the Beneficiary shall, in addition to all other rights and remedies herein provided, have all the rights and remedies accorded a secured party under the Uniform Commercial Code of the Commonwealth of Virginia.

8. No Duty to Expend Funds. Nothing in this Deed of Trust shall be construed to impose any obligation upon either the Beneficiary or the Trustee to expend any money or to take any other discretionary act herein permitted, and neither the Beneficiary nor the Trustee shall have any liability or obligation for any delay or failure to take any discretionary act.

9. Release. Upon the purchase of the Beneficiary's interest in the Project by the Grantor, the Trustee shall, upon the request of Grantor, execute a proper release of this Deed of Trust.

10. Indemnification by Grantor. The Grantor shall protect, indemnify and save harmless the Beneficiary and the Trustee under this Deed of Trust from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, attorneys' fees and expenses) imposed upon, incurred by, or asserted against, the Beneficiary or the Trustee on account of (i) any failure or alleged failure of the Grantor to comply with any of the terms or representations in this Deed of Trust, or (ii) any claim or loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, or (iii) any failure or alleged failure of Grantor or any tenant to comply with any law, rule **or regulation** regarding the use, occupancy or operation of the Property. Nothing contained herein shall require the Grantor to indemnify the Beneficiary or the Trustee for any claim or liability resulting from its or their gross negligence or its or their willful and wrongful acts. The covenants in this Section shall survive payment of the Obligations and the release of this Deed of Trust. The indemnity provided for herein shall extend to the officers, directors, employees and duly authorized agents of the Beneficiary.

11. Trustee's Acts. The Trustee shall not be required to see that this Deed of Trust is

Example 5-4: Deed of Trust

recorded and shall not be liable for the default or misconduct of any agent or attorney appointed by them in pursuance hereof, or for anything whatever in connection with this Deed of Trust, except willful and wrongful misconduct or gross negligence. The Trustee may act upon any instrument or paper believed by him in good faith to be genuine and to be signed by the proper party or parties, and shall be fully protected for any action taken or suffered by them in reliance thereon.

**12. Foreclosure of Leases. Trustee, at the request of Beneficiary, is authorized to foreclose this Deed of Trust either free of or subject to the** rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose theft rights will not be, nor be asserted by Grantor to be, a defense to any proceedings instituted by Beneficiary to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale **of the** Premises. Unless otherwise agreed by Beneficiary in writing, all leases and tenancies of the Premises, or any part thereof, shall be subordinate and inferior to the lien of this Deed of Trust, except that **from** time to time Beneficiary may execute and record among the land records of the jurisdiction where this Deed of Trust is recorded, subordination statements with respect to each of said leases as Beneficiary may designate, whereby the leases so designated by Beneficiary will be made superior to the lien of this Deed of Trust only in accordance with the terms of such agreement.

13. Binding Effect. This Deed of Trust shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns and **any** descriptive term used herein shall include such heirs, personal representatives, successors and **assigns**. The pronouns and verbs set forth herein shall be construed nonbeing of such number and gender as the context may require.

14. Severability. If any provision of this Deed of Trust shall be prohibited or held invalid by applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating either the remainder of such provision or the remainder of this Deed of Trust.

15. Law Governing. This Deed of Trust shall be governed by the laws of the Commonwealth of Virginia.

WITNESS the following signatures and seals as of the day and year first above written.

\_\_\_\_\_ (SEAL)

Example 5-4: Deed of Trust

STATE OF VIRGINIA

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

The foregoing instrument was acknowledged before me, in my jurisdiction aforesaid, this  
\_\_\_\_\_ day of \_\_\_\_\_, **Year**, by \_\_\_\_\_.

My Commission expires: