

DEPARTMENT OF TRANSPORTATION

**RAIL FREIGHT ASSISTANCE
AGREEMENT**

-AND-

THIS RAIL FREIGHT ASSISTANCE AGREEMENT, made and entered into this the day of _____, 20____, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the Department; and (Railroad)_____, hereinafter referred to as the Railroad.

W I T N E S S E T H:

WHEREAS, Article 2D of Chapter 136 of the North Carolina General Statutes finds that programs for railroad revitalization are vital to the continued growth and prosperity of the State and serve the public purpose; and

WHEREAS, the Department of Transportation is designated by N.C.G.S. 136-44.36 as the agency of the State of North Carolina responsible for administering all federal and State programs related to railroad revitalization and grants the Department authority to do all things required under applicable federal and state legislation to administer properly the rail transportation programs within the State of North Carolina; and

WHEREAS, the Department is authorized to distribute federal and state financial assistance for local railroad revitalization projects; and

WHEREAS, the Department has authorized the distribution of state financial assistance to perform railroad infrastructure improvements (“the Project”) as more particularly described on the attached Exhibit A and incorporated herein;

NOW, THEREFORE, the Department and the Railroad do agree:

1. The Railroad shall perform, or cause to be performed, the work hereinafter set forth; said work to be performed, or provision made therefore, in a manner satisfactory to and in conformance with applicable federal, state, and local policies, rules and regulations of the State of North Carolina including compliance with applicable environmental policies, rules, regulations and statutes.

2. The Railroad shall perform the Project in accordance with the plans and specifications of said Project, approved by the Department prior to the work being contracted or performed. The Railroad shall enter into and shall administer the construction contract for the Project and the procedures set out herein below shall be followed:

(A) During performance of the Project, if any changes in the plans are necessary, such change must be approved by the Department prior to the work being performed.

(B) The Department shall have the right to inspect any portion of the work being performed by the Railroad or the Railroad’s contractor to ensure compliance with the provisions of this Agreement.

(C) All materials incorporated into the Project and workmanship performed by the Railroad shall be in reasonable close conformity with the Standards and Specifications approved by the Department.

(D) Prior to the final acceptance and payment by the Department, the Department shall have the right to make a final inspection of the completed work.

(E) Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statute 143-129 requiring competitive bidding and award to the lowest responsible bidder.

3. Costs, Invoicing and Payment

(A) It is understood by the parties hereto that the Department, subject to compliance with applicable state and federal policy, rules and regulations, and statutes, will participate in the Project costs to the extent of _____ PERCENT (_____ %) up to _____ DOLLARS (\$ _____) whichever may be less. Such Project costs eligible for reimbursement by the Department are limited to the following:

(B) The Railroad may bill the Department in advance for necessary materials, labor or contractual costs to begin the Project. In order to receive subsequent advance payments, the expenses for previous payments must be substantiated. The Railroad must submit itemized invoices with appropriate documentation to the Department to account for costs. No more than one request for an advance or reimbursement may be submitted during any thirty (30) day period. The invoice must be reviewed and approved by the Rail Division and the Department's Fiscal Branch prior to additional advance payments or reimbursements.

(C) Any work performed by Railroad force account must be preapproved in writing by the Department. Subsequent invoices shall show a summary of labor, labor additives, equipment, materials and other qualifying costs in conformance with the standards for costs set forth in the Office of Management and Budget (OMB) Circular A-87. Payment shall be based on actual cost incurred with the exception of equipment owned by the Railroad. Payment for use of equipment owned by the Railroad cannot exceed the Department's rates in effect for the time period in which the work is performed. Reimbursement for crossties and surfacing shall be based on actual cost not to exceed a maximum cost determined by the Department. The maximum cost of a crosstie shall be X and the maximum cost of track surfacing shall be X per foot. If work is performed by a contractor, said invoices shall show the contract cost.

(D) The Railroad agrees that it shall bear all construction costs for which it is unable to substantiate actual costs.

(E) Any costs incurred by the Railroad prior to NC Board of Transportation approval shall not be eligible for reimbursement.

(F) Final payment will be made upon completion of the Project.

(G) The Railroad will comply with all relevant state and federal statutes, rules, and regulations in procuring goods and services from third parties for construction of the Project. Third party contracts shall be approved by the Department prior to commencing project work

(H) The Railroad and its subcontractors will permit the Department and/or the Office of the State Auditor to inspect all work, materials, payrolls, and other data and records with regard to the Project and to audit all books, records, and accounts pertaining to the Project including books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Railroad shall make such materials available at its office at all reasonable

times during the contract period, and for five (5) years or until all audit exceptions have been resolved, whichever is longer, from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section and/or Office of State Auditor. The Contractor shall permit the Department and/or Office of State Auditor full access to the Project site before, during, and after construction.

(I) Historically Underutilized Business (HUB) Program.

(a) Policy. It is the policy of the Department to encourage and promote the use of small contractors, minority contractors, physically handicapped contractors, and women contractors in purchasing of goods and services. The requirements of G.S. 143-48, and any subsequent amendments or revisions thereto, apply to this Agreement.

(b) Obligation under G.S. 143-48.

- (1) The Railroad or its contractors agree(s) to ensure that any Historically Underutilized Business as defined in G.S. 143-48 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with state funds provided under this Agreement. In this regard the Railroad or its contractors shall take all necessary and reasonable steps in accordance with G.S. 143-48 to ensure that any Historically Underutilized Business have the maximum opportunity to compete for and perform contracts. The Railroad, its contractors and their subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of Department assisted contracts.
- (2) The Railroad shall advise each Contractor or subcontractor that failure to carry out the requirements set forth in G.S. 143-48 shall constitute a breach of contract and, after the notification of the Department, may result in termination of the agreement or contract by the Railroad or such remedy as the Railroad deems appropriate.
- (3) When payments are made to a Historically Underutilized Businesses, the Railroad shall keep records accounting for said payments. This information shall be reported on invoices submitted to the Department.

4. Default

(A) Failure on the part of the Railroad to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project.

(B) Project Completion must occur within twenty-four (24) months after the execution of this Agreement. The Railroad will diligently pursue completion of its responsibilities on the Project. If within one year after the execution of this Agreement, the Railroad has not completed its responsibilities, or in the opinion of the Department, satisfactory progress has not been made, the unexpended balance of funds may be recalled by the Department and assigned to other Projects by the Board of Transportation. A 60-day notice will be given prior to recall date. The Railroad may petition the Department for an extension of the twenty-four month period due to extenuating circumstances. The petition will be reviewed and a decision made by the appropriate Board of Transportation Committee. The Railroad will be notified of the Committee's decision within 60 days.

(C) The Department may, at its option, declare the Railroad to be in default with respect to this Agreement in the event of the occurrence of any of the following:

- a. Substantial failure as determined by the Department to perform the Project as described in Exhibit A.
- b. If Project tracks or other Project improvements are abandoned.

- c. If Project tracks or other Project improvements are relocated or sold without the written approval of the Department.

If the Department determines that Railroad has failed to meet its obligations under this Section 4., and/or is determined to be in default under the terms of this Agreement, the Department shall be entitled to a pro rata share of its entire financial investment in the Project for the 5-year period following project completion.

5. It is agreed that the Project improvements, will be owned by the Railroad and that upon completion of the Project the track owner will be responsible for maintaining the Project tracks.
6. This Agreement is personal to the Railroad and shall not inure to the successors or assigns of the Railroad without the written approval of the Department.
7. The Railroad agrees to protect, indemnify, and save the Department wholly harmless from and against the consequences of any damages or loss of life, personal injury, or property which may be caused by or result from the construction, maintenance, and use of the Project. The Contractor agrees to indemnify and hold harmless the Department, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contractor in connection with the performance of this Agreement.
8. No member, officer or employee of the Department shall have any interest, direct or indirect, in this Agreement or the proceeds there from.
9. In connection with the execution of the Agreement, the Railroad shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
10. Railroad agrees and understands that the state funds awarded pursuant to this Grant Agreement will be secured by the Railroad granting to the Department a Contingent Interest in and an Equitable Lien securing property, assets and improvements purchased with such state funds. As a condition of the award of state funds to the Railroad, the Railroad agrees to execute and enter into with the Department a "Contingent Interest Agreement, Evidence Of Indebtedness And Equitable Lien Agreement" contemporaneously with the execution of this Grant Agreement.
11. The parties to this Agreement agree and understand that the payment of the sums specified in this Agreement is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Department.
12. Non-state grantees and private entities are required to comply with the reporting requirements in North Carolina General Statute 143-6.2 and North Carolina Administrative Code Title 09, section 03M-.0102 - .0802. They specify that non-state grantees that receive state funds between \$25,000 and \$500,000 must file annually with the Department the following:
 - (A) State Grants Compliance Reporting: Receipt of \$25,000 or more;
 - (B) Schedule of Receipts and Expenditures;
 - (C) Program Activities and Accomplishments Report.

All reporting requirements shall be filed with the Department within six months after the end of the Railroad's fiscal year in which the State funds were received.

13. Railroad shall file with the Department a copy of Railroad’s policy addressing conflicts of interest that may arise involving the railroad’s management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Railroad’s employees or members of its board or other governing body, from the Railroad’s disbursing of State funds and shall include actions to be taken by the Railroad or the individual, or both to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the Department may disburse the grant funds. (N.C.G.S. 143-6.2(b1)(2005))

14. Railroad’s sworn written statement pursuant to N.C.G.S. 143-6.2(b2), stating that the Railroad does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level, is attached as Exhibit B. Railroad must complete statement on Railroad’s letterhead and attach as Exhibit B.

15. The Railroad, its subcontractors shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 and shall not discriminate against any employee or applicant for employment based on race, religion, color, sex, or national origin.

16. All notices permitted or required to be given by one Party to the other and all questions about the contract from one Party to the other shall be addressed and delivered to the other Party’s Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties’ respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Agency:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Pam Davis, Rail Freight Coordinator NCDOT Rail Division 1553 Mail Service Center Raleigh, NC 27699-1553 Telephone 919-733-7245, ext. 274 Fax 919-715-6580 Email pamdavis@dot.state.nc.us	Pam Davis, Rail Freight Coordinator NCDOT Rail Division 1 S Wilmington Street, Room 555 Raleigh, NC 27601

For the Railroad:

IF DELIVERED BY US POSTAL SERVICE	IF DELIVERED BY ANY OTHER MEANS
Name Title: Company Name: P.O. Box / Address: City State, Zip: Telephone: Fax: Email:	Name Title: Company Name; P.O. Box / Address: City State, Zip:

17. Railroad is prohibited from contracting with or making subawards under transactions covered by this agreement to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000 and all nonprocurement transactions (e.g., subawards to subrecipients). Contractors receiving individual

awards for \$ 25,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. Railroad may rely upon the certification unless it knows that the certification is erroneous. Railroad agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

18. Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

19. The Parties may terminate this Agreement by mutual consent with 60 days notice to the other party, or as otherwise provided by law.

20. If, through any cause, the Railroad shall fail to fulfill its obligations under this Agreement in a timely and proper manner, the Department shall have the right to terminate this Agreement by giving written notice to the Railroad and specifying the effective date thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the Department and the Railroad by and through duly authorized representatives, and is effective the date and year first set forth hereinabove.

(RAILROAD)

BY: _____

ATTEST:

(SEAL)

Clerk

Employer Tax Identification Number:

Fiscal Year End Date:

Department of Transportation

BY: _____
Deputy Secretary for Transit

ATTEST:

(SEAL)

Secretary to the Board of Transportation
and Custodian of the Seal of the Department
of Transportation

EXHIBIT A

Project Description

EXHIBIT B

Instructions: Railroad should complete this certification for all state funds received. Entity should enter appropriate data in the highlighted areas. The completed and signed form should be provided to the state agency funding the grant to be attached to the contract for the grant funds. A copy of this form, along with the completed contract, should be kept by the funding agency and available for review by the Office of the State Auditor. If you have questions, contact: Angela Gunn, Office of the State Auditor, 919-807-7556.

Attachment B
State Grant Certification – No Overdue Tax Debts

Entity's Letterhead

[Date of Certification (mmddyyyy)]

To: State Agency Head and Chief Fiscal Officer

Certification:

We certify that the **[insert organization's name]** does not have any overdue tax debts, as defined by N.C.G.S. 105-243.1, at the federal, State, or local level. We further understand that any person who makes a false statement in violation of N.C.G.S. 143-6.2(b2) is guilty of a criminal offense punishable as provided by N.C.G.S. 143-34(b).

Sworn Statement:

[Name of Board Chair] and **[Name of Second Authorizing Official]** being duly sworn, say that we are the Board Chair and **[Title of the Second Authorizing Official]**, respectively, of **[insert name of organization]** of **[City]** in the State of **[Name of State]**; and that the foregoing certification is true, accurate and complete to the best of our knowledge and was made and subscribed by us. We also acknowledge and understand that any misuse of State funds will be reported to the appropriate authorities for further action.

Board Chair

[Title of Second Authorizing Official]

Sworn to and subscribed before me on the day of the date of said certification.

(Notary Signature and Seal)

My Commission Expires:

If there are any questions, please contact the North Carolina Office of the State Auditor:

Angela Gunn @ (919) 807-7556 or Harriet Abraham @ (919) 807-7673.