

WBS Element: XXXXX

Project No.

XX-IN-XXXXX

State of North Carolina

Grantee XXXXX

**DEPARTMENT OF TRANSPORTATION**

**RAIL INDUSTRIAL ACCESS  
AGREEMENT**

**-AND-**

XXXXX

THIS RAIL INDUSTRIAL ACCESS AGREEMENT, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina (“the Department”); and XXXXX (“the Contractor”).

**WITNESSETH:**

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, Title 19A, Subchapter 6B, of the North Carolina Administrative Code contains all rules and regulations pertaining to the administration of the Rail Industrial Access Program; and

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

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

1. 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 XXXXX Percent (XXXXX%) up to XXXXX DOLLARS (\$XXXXX) whichever may be less. Such Project costs eligible for reimbursement by the Department are limited to reasonable engineering costs; site preparation, including grading and drainage; track construction; installation of switches; and construction of grade crossings and signals. Costs which are not eligible for reimbursement by the Department include relocation of utilities, acquisition of rights of way and construction of rail docks. The Contractor will invoice the Department after the first railroad car operates over the Project tracks (“Project Completion”).

Project Completion must occur within twenty-four (24) months after the execution of this Agreement.

2. The Contractor must obtain all necessary county and city certifications, easement certifications, and industry certifications pursuant to Title 19A, Subchapter 6B, Sections 6B.0407 - .0409 of the North Carolina Administrative Code before beginning construction on the Project.

3. The Contractor 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.

4. It is agreed that the rail industrial access tracks, once constructed, will be owned by the Contractor or the industry served and that upon completion of the Project the track owner will be responsible for maintaining the Project tracks.

5. This Agreement is personal to the Contractor and shall not inure to the successors or assigns of the Contractor without the written approval of the Department.

6. Upon Project Completion, the Contractor will retain all records pertaining to the Project for a period of three (3) years and comply with all reporting requirements as contained in Title 19A, Subchapter 6B, Section .0416 of the North Carolina Administrative Code.

7. The Contractor, its subcontractors will permit the Department 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 **(Municipality, County or Private / Nonprofit)** shall make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of final payment under this Agreement, for inspection and audit by the Department's Fiscal Section. The Contractor shall permit the Department full access to the Project site before, during, and after construction.

8. The Contractor, 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.

9. If the Project tracks are abandoned, relocated, or sold without a grant assignment or without written approval of the Department, the track owner shall repay the Department its contribution to the cost of construction and materials, less depreciation. The Department further reserves the right to demand repayment if: (1) during the first five (5) years, rail use falls below the goal levels specified in the industry certification; or (2) job goals, as specified in the industry certification, for the first two (2) years are not met.

10. The Contractor 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.

11. The Contractor shall furnish the Department a copy of the plans and specifications related to the construction of the Project tracks.

12. In accordance with OMB Circular A-133, "audits of States, Local Governments and Non-Profit Organizations", ([www.whitehouse.gov/OMB/circulars/a133/a133.html](http://www.whitehouse.gov/OMB/circulars/a133/a133.html)), the **(Municipality, County or Private / Nonprofit)** shall arrange an independent financial and compliance audit of its fiscal operations. The **(Municipality, County or Private / Nonprofit)** shall furnish the Department with a copy of the independent

audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the **(Municipality, County or Private / Nonprofit)**'s fiscal year ends.

13. Failure on the part of the Grantee/Railroad to comply with any of these provisions will be grounds for the Department to terminate participation in the costs of the project.

14. Per OMB Circular A-133, *Municipality or County* 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. *Municipality or County* may rely upon the certification unless it knows that the certification is erroneous.

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

XXXXXX

BY: \_\_\_\_\_

ATTEST:

**(SEAL)**

\_\_\_\_\_  
Clerk

**Department of Transportation**

BY: \_\_\_\_\_  
Deputy Secretary for  
Transportation

ATTEST:

**(SEAL)**

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

**EXHIBIT A**

*the construction of rail spur tracks to serve XXXXX in XXXXX County.*

Complete description from application  
Include objectives to be achieved and expected results