

NORTH CAROLINA
_____ COUNTY

DATE: _____, 20__

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

RAIL INDUSTRIAL ACCESS
AGREEMENT

AND

FRRCSI ID: _____
WBS: _____

NAME OF COMPANY

THIS RAIL INDUSTRIAL ACCESS AGREEMENT (hereinafter "RIA Agreement") is made and entered into on the last date executed below (hereinafter "Effective Date") by and among the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, (hereinafter "Department"), and [NAME OF COMPANY], a _____ of the State of _____ (hereinafter "Company" and/or "Grantee"). The Department and the Grantee are hereinafter referred to individually as "Party" and collectively as "Parties."

W I T N E S S E T H:

WHEREAS, North Carolina General Statutes (N.C.G.S.) §§ 136-44.35-.40, Railroad Revitalization, states 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 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 perform railroad infrastructure improvements 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 of the North Carolina Administrative Code (N.C. Admin. Code) 06B.0400 sets forth the criteria to apply and obtain funding for railroad revitalization projects that serve the public purpose in the form of economic development under the administration of the Rail Industrial Access Program; and

WHEREAS, N.C.G.S. § 124-5.1 authorizes assistance from the Freight Rail & Rail Crossing Safety Improvement Fund (FRRCSI) for improvements to rail access to industrial, port, and military facilities; and

WHEREAS, the Department has authorized the distribution of State financial assistance to perform railroad infrastructure, health, and safety improvements for the operating efficiency of the rail corridor (hereinafter "Project"); and

WHEREAS, the Department has determined that the Project will be funded through the aforementioned Rail Industrial Access Program with FRRCSI funds; and

WHEREAS, the Parties agree to participate in the cost of the Project as addressed in this RIA Agreement and/or to assume the maintenance responsibilities as hereinafter set out.

NOW, THEREFORE, the Parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

I. SCOPE OF WORK

The Project's Scope of Work shall consist of _____ in _____, North Carolina, and as further shown on the attached Exhibit A.

The Grantee, and/or its agent, shall perform the Scope of Work in accordance with the approved Project plans and specifications, and all federal and State policies and procedures.

As a contingency for the construction of this Project, the serving railroad has committed to provide needed rail freight service for said spur line as shown on the attached Exhibit E.

II. FUNDING

The total cost of the Project is _____ AND ___/100 DOLLARS (\$____,____.____).

A. DEPARTMENT PARTICIPATION

It is understood by the Parties hereto that the Department shall participate in the cost of the Project at a Forty Percent (40%) match, not to exceed _____ AND ___/100 DOLLARS (\$____,____.____), of the total Project costs (hereinafter "Grant Amount"). Said Grant Amount shall be funded with FRRCSI funds (WBS _____.____.____). All costs that exceed the Grant Amount shall be borne by the Grantee. Such Project costs eligible for payment by the Department are limited to the items listed in Exhibit A.

B. GRANTEE PARTICIPATION

The Grantee, and/or its agent, shall contribute the remainder of all Project Costs that exceed the Department's Grant Amount.

III. PROFESSIONAL AND ENGINEERING SERVICES

The Grantee shall comply with the policies and procedures of this Section if Engineering and/or Construction Contract Administration is an eligible expense.

A. PRELIMINARY ENGINEERING AUTHORIZATION

Preliminary Engineering is an eligible expense. Upon receipt of an executed copy of this RIA Agreement, the Department will authorize Preliminary Engineering funds and shall notify the Grantee in writing once funds have been authorized and can be expended. The Grantee shall not initiate any work, nor solicit for any professional services, prior to receipt of written authorization from the Department to proceed. Any work performed or contracts executed prior to receipt of written authorization to proceed will be ineligible for reimbursement.

B. IN-HOUSE STAFF

The Grantee may use qualified in-house professional services staff based on the Department's approval of a Scope of Services which details staff qualifications, staff time, and wage rates. In the event in-house professional services staff is not used, the Grantee shall follow the Procurement of Professional Services set out below in Section III.C.

C. PROCUREMENT OF PROFESSIONAL SERVICES

Contracts for engineering, design, or construction management services shall be subject to N.C.G.S. §§ 143-64.31–.34 and the Department's Policies and Procedures for Major Professional or Specialized Services Contracts, which require that if the estimated fee to be paid for such contracts is more than Fifty Thousand Dollars (\$50,000), then any advertisement for said contracts shall be pre-approved by the Department and the procurement of said services shall require qualifications-based selection.

D. SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this RIA Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms to the SPSF Guidelines as approved by the North Carolina Board of Transportation.

- The Grantee shall not advertise nor enter into a contract for services performed as part of this RIA Agreement unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Grantee fails to comply with these requirements, the Department will withhold funding until these requirements are met.

IV. ENVIRONMENTAL DOCUMENTATION

It is understood by all Parties that there may not be any environmental documentation and/or applicable environmental permits required for the construction of the Project.

However, in the event said documentation and/or permits are required, the Grantee shall be responsible for the preparation of the environmental document and/or securing any applicable permits needed to construct the Project. Said documentation shall be in accordance with the State Environmental Policy Act (SEPA) or as required and defined pursuant to N.C.G.S. §§ 113A-1 to -13 and all other appropriate environmental laws and regulations. All work shall be performed in cooperation with the Department's Rail Planning and Development Branch personnel and in accordance with applicable federal and State standards, specifications, policies, and procedures. Said documentation shall be submitted to the Department for review and approval.

V. DESIGN

The Grantee, and/or its agent, shall prepare the Project's plan, specifications, and an estimate of costs (PS&E package) needed to construct the Project. All work will be done in accordance with applicable federal and State standards, specifications, policies, and procedures. The Project's plans and specifications will be submitted to the Department for review and comment. The Department will submit all comments in writing to the Grantee within sixty (60) days of receipt of the Project's plans from the Grantee. If no comments are received from the Department within sixty (60) days, the Department and Grantee shall conduct a conference call meeting within five (5) business days thereof to discuss the status of the plan's review. If determined necessary for proper administration of the Project's Scope of Work, the Department reserves the right to review the Grantee's technical specifications and requirements. Upon approval, the Project's plans and specifications will be incorporated herein by reference (PS&E package).

For projects where plans or drawings of the proposed improvements are deemed unnecessary by the Parties, the Project's Scope of Work attached as Exhibit A and the Grantee's compliance with the procurement provisions of this RIA Agreement shall be considered sufficient for Department review of the proposed Project.

VI. RIGHT-OF-WAY

It is understood that all work for the completion of the Project shall be contained within the existing right-of-way/property of the Grantee and the serving railroad.

However, if it is determined that additional right-of-way is needed, the Grantee shall accomplish all right-of-way (ROW) activities for the completion of the Project including acquisition and relocation, at no expense or liability to the Department. All ROW activities, including acquisition of easement/property and relocation, shall be accomplished

in accordance with N.C.G.S. § 136-44.36 and N.C.G.S. §§ 133-5 to -18 (Relocation Assistance) and the North Carolina Department of Transportation Right of Way Manual.

VII. UTILITIES

It is understood by all Parties that there are no utilities in conflict with this Project.

In the event utility conflicts with the Project are discovered, the Grantee, and/or its agents, shall be solely responsible for all cost of the relocation and adjustment of the utility and at no liability to the Department.

VIII. CONSTRUCTION

A. CONSTRUCTION AUTHORIZATION

The Grantee, and/or its agents, may proceed with construction of the Project upon receipt of the executed RIA Agreement and, if applicable, approval by the Department of any third-party contracts noted below in Section VIII.B.

B. CONSTRUCTION PROCUREMENT

The Grantee 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 unless an approved continuing contractor will perform the work.

Compliance is mandatory with the following provisions:

Contracts for construction or materials shall conform to N.C.G.S. § 136-28.7 (Buy American) which requires that all steel and iron incorporated into the Project shall be manufactured in the United States with certain exceptions. Any contract for materials purchase should include assurances from the supplier that the materials conform to N.C.G.S. § 136-28.7 and said assurance shall be provided to the Department upon its request. A standard provision for insertion into a contract for supplies is available from the Department upon request.

Letting of contracts for construction and materials purchases shall be in accordance with N.C.G.S. §§ 143-128 to -135.9 which requires competitive bidding and award to the lowest responsible bidder.

The Grantee must obtain all required County and Municipal certifications, easement certifications, and industry certifications pursuant to 19A N.C. Admin. Code 06B.0407-.0409 before beginning construction on the Project.

C. CONSTRUCTION SUBCONTRACTOR REQUIREMENTS

Minority and Women Businesses

It is the policy of the North Carolina Department of Transportation that Minority and Women Businesses Enterprise (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed by non-federal funds. The Grantee, and/or its agent, is also encouraged to give every opportunity to allow MBE/WBE participation in supplemental agreements.

The MBE/WBE goals for this RIA Agreement are as follows: 0% MBE, 0% WBE.

Any contract entered into with another party to perform work associated with the requirements of this RIA Agreement shall contain appropriate provisions regarding the utilization of MBE/WBE, or as required and defined in N.C.G.S. § 136-28.4 and 19A N.C. Admin. Code 02D.1100 (See Attachment 1).

D. CONSTRUCTION PROCEDURE

The Grantee, and/or its agent, shall construct, or have constructed, the Project in accordance with the PS&E package, noted above in Section V. The Grantee, and/or its agent, shall enter into and administer the construction contract for said work and the procedures set out herein below shall be followed:

1. Supervision

The construction engineering and supervision will be furnished by the Grantee.

2. Right of Entry

The Grantee agrees to provide the Department, and/or its contractors, with a right of entry for the right to review Project construction and for final field review as set forth below.

3. Right to Review and Approve/Reject

The Department shall have the right to review the Project construction for purposes of identifying compliance by Grantee with its obligations under this RIA Agreement and for purposes of determining whether Grantee has performed the Project as described in Exhibit A.

4. Change Orders

During said work, if any changes in the plans are necessary, such changes must be approved by the Department prior to the work being performed.

5. Compliance with Standards and Specification

All materials incorporated into the Project and workmanship performed by the Grantee shall be in reasonable close conformity with the serving railroad's standards and specifications, applicable to such work on its own railroad system, in accordance with the approved PS&E package, all federal and State regulations, and generally consistent with the American Railway Engineering and Maintenance-of-Way Association (AREMA) recommended practice.

6. Final Field Review

Prior to the final acceptance and payment by the Department, the Rail Division shall have the right to make a final field review of the completed work.

7. Signage

If construction involves encroachment on the highway system, the Grantee shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in accordance with standards and specifications of the Department and the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) published by the Federal Highway Administration.

8. Timeframe

Project Completion must occur within eighteen (18) months after the execution of this RIA Agreement. The Grantee will diligently pursue completion of its responsibilities on the Project. If, in the opinion of the Department, satisfactory progress has not been made within nine (9) months after execution of this RIA Agreement, the Grant Amount may be recalled by the Department and assigned to other projects by the Board of Transportation. A sixty (60) day notice will be given prior to recall date. The Grantee may petition the Department at least sixty (60) days in advance of the expiration of this RIA Agreement for an extension of the eighteen (18) month period due to extenuating circumstances. The petition will be reviewed, and a decision made by the appropriate Board of Transportation Committee. The Grantee will be notified of the Committee's decision within sixty (60) days.

9. Notification of Project Completion

The Grantee shall provide the Department with written notification that a Project is complete and in service prior to requesting reimbursement ("Project Completion"). The aforesaid written notification by the Grantee to the Department shall constitute the Project Completion date.

10. Reporting

The Grantee shall provide monthly progress reports to the Department on its provided form. Progress reports shall indicate progress made, milestones achieved, and potential delaying factors.

Upon completion of the spur track, the Grantee shall provide to the Department employment numbers for the first two (2) years and annual carloads for the first five (5) years.

IX. REIMBURSEMENT

A. SUBMITTAL OF INVOICE

Within six (6) months of Project Completion, the Grantee shall submit one (1) itemized invoice and any required supporting documentation to the Department's Rail Division for Project preliminary engineering and construction costs associated with the Project Work performed by the Grantee or its contractor. Reimbursement by the Department to the Grantee is limited to the items listed in Exhibit A. The Department reserves the right to withhold payment on an invoice received more than six (6) months after Project Completion.

The request for reimbursement shall include, but not be limited to, the following: Grantee invoices, contractor(s) invoices, materials invoices, proofs of payment of third-party invoices, certification by the serving railroad that the Project tracks are acceptable for use, proof of track use in the form of a waybill or picture, before and after photographs of the Project site, and Department required forms (Request for Reimbursement form).

By submittal of the invoice to the Department, the Grantee certifies that it has adhered to all applicable State and federal laws, policies, rules, regulations, and statutes as set forth in this RIA Agreement. Payment to the Grantee shall be made upon review and approval of the invoice by the Department's Rail Division, Office of the Inspector General, and Financial Management Division.

B. REIMBURSEMENT TERMS

Payment to the Grantee shall be made upon review and approval of the invoice by the Department's Rail Division, Office of the Inspector General, and Financial

Management Division. Within thirty (30) calendar days of approval of the submitted itemized invoice, the Department shall submit the approved invoice amount to the Grantee for the eligible Project Cost based upon the Scope of Work.

By initiating procurement activities that may include labor and material acquisition, the Railroad acknowledges that no eligible project expenditures will be reimbursed by the Department until July 1, 2022, or later.

C. REIMBURSEMENT FOR FORCE ACCOUNT WORK

Any work performed by Grantee 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 2 C.F.R. Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” Payment shall be based on actual cost incurred with the exception of equipment owned by the Grantee. Payment for use of equipment owned by the Grantee cannot exceed the Department’s rates in effect for the time period in which the work is performed. If work is performed by a contractor, said invoices shall show the contract cost.

D. ADDITIONAL REIMBURSEMENT GUIDANCE

1. ACH Payments

It is the Department’s policy to pay invoices via electronic funds transfers through the automated clearing house (ACH) network. To initiate payment of invoices via ACH, if applicable, the party(ies) shall execute the Department’s standard State of North Carolina Department of Transportation ACH – EFT Authorization Form (hereinafter “ACH Authorization Form”).

2. Unsubstantiated Costs

The Grantee agrees that it shall bear all costs for which it is unable to substantiate actual costs.

3. Incurred Costs

Any costs incurred by the Grantee prior to execution of this RIA Agreement shall be borne solely by the Grantee.

4. Costs Outside Scope

The Department shall not reimburse the Grantee for the costs of any work outside the Project’s Scope of Work unless the Parties have agreed to a budget revision for such work.

5. Reconciliation at Final Invoice and Program Close Out

If, after reconciliation, the Department determines that the funds paid to the Grantee for the Project were not used in accordance with the terms of this RIA Agreement, except when the Grantee is acting in good faith under the direction of the Department, the Department will bill the Grantee. The Grantee shall reimburse the Department said amount of funds, including any administrative costs, within thirty (30) days of written notification by the Department.

X. MAINTENANCE

Upon Project Completion, the Grantee shall own and/or assume ownership of the improvements as addressed in Exhibit A. The Grantee, and/or future track owner(s), shall assume all liability and maintenance responsibilities for the rail industrial access track upon completion of the improvements.

XI. OTHER PROVISIONS

A. TERMINATION OF PROJECT

The Parties may terminate this RIA Agreement by mutual consent, with sixty (60) days' written notice to the other Parties, or as otherwise provided by the law.

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

Failure on the part of the Grantee, and/or its contractor, to comply with any of the provisions of this RIA Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of all cost expended by the Department, provided, however, that the Department shall first notify the Grantee of such failure in writing and provide the Grantee sixty (60) days to cure same.

B. DEFAULT

The Department may, at its option, declare the Grantee to be in default with respect to this RIA Agreement in the event of the occurrence of any of the following:

1. Substantial failure, as determined by the Department, of the Grantee to complete the construction of the Project as described in Exhibit A within eighteen (18) months after execution of this RIA Agreement.

2. If Project tracks or other Project improvements are abandoned pursuant to law, relocated, or sold without a grant assignment or without written approval by the Department during the five (5) years following Project Completion.

If the Department determines that Grantee has failed to meet its obligations under this Section XI.B, and/or it is determined to be in default under the terms of this RIA Agreement, the Department shall be entitled to a pro rata share of its entire financial investment, less depreciation, equal to twenty percent (20%) of the Project cost per year for five (5) years.

The Department further reserves the right to demand repayment if: (1) in the first five (5) years following Project Completion, rail use falls below the goal levels as specified in the industry certification; or (2) in the first two (2) years following Project Completion, job creation falls below the goal levels as specified in the industry certification completed in accordance with Section 5 and attached as Exhibit B; or (3) the Grantee fails to provide the required reports in accordance with Section XI.G.

C. TRANSFER OF RESPONSIBILITIES

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

The Department must approve any assignment or transfer of responsibilities of the Grantee set forth in this RIA Agreement to other entities.

D. AGREEMENT MODIFICATIONS

No changes in the scope of this RIA Agreement shall occur unless the changes have been mutually agreed upon by all Parties to this RIA Agreement, and approved in writing by the appropriate Department Head, Authorized Agent, or Contracting Officer, as included in Section XI. M. of this RIA Agreement prior to being implemented.

E. INDEMNIFICATION

To the extent authorized by law, each Party shall be responsible for its respective actions under the terms of this RIA Agreement and indemnify and save harmless the other Party(s) for any claims for payment, damages, and/or liabilities arising as a result of such action. Except that indemnification given by the Department shall be only in the manner and to the extent allowed by North Carolina law, including the Tort Claims Act, North Carolina General Statutes (N.C.G.S.) §§ 143-291 *et seq.*, and without waiver of its sovereign immunity.

F. AVAILABILITY OF FUNDS

The Parties to this RIA Agreement agree and understand that the payment of the sums specified in this RIA Agreement is dependent and contingent upon, and subject to, the appropriation, allocation, and availability of funds for this purpose to the Department and the RIA Agreement shall automatically terminate if funds cease to be available.

G. REPORTING REQUIREMENTS

Notwithstanding the Reporting Requirements set forth in this subsection, the Department agrees that for five (5) years after the date of final payment by the Department hereunder to the Grantee, the Department may inspect and audit the Grantee's records at reasonable times and at the locations where the same are maintained only with respect to the grant funds received pursuant to this RIA Agreement and the Project covered hereby in order to account fully for the use and expenditure of grant funds received by the Grantee. The Grantee agrees that the Grantee and its contractors are to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred for the said Project and to make such materials available to the Department and copies thereof shall be furnished if requested.

1. Uniform Administration of State Awards of Financial Assistance Minimum Reporting Requirements for Recipients and Subrecipients

- a. For the purpose of this Subchapter, there are three (3) reporting levels established for recipients and subrecipients receiving State financial assistance. Reporting levels are based on the level of State financial assistance from all funding sources. The reporting levels are:
 - i. Level I – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount less than Twenty-Five Thousand Dollars (\$25,000) within its fiscal year.
 - ii. Level II – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount of at least Twenty-Five Thousand Dollars (\$25,000) or greater, but less than Five Hundred Thousand Dollars (\$500,000) within its fiscal year.
 - iii. Level III – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than Five Hundred Thousand Dollars (\$500,000) within its fiscal year.
- b. The reporting requirements for each level are as follows:

- i. All recipients and subrecipients shall provide a certification that State financial assistance received, or held, was used for the purposes for which it was awarded.
 - ii. All recipients and subrecipients shall provide an accounting of all State financial assistance received, held, used, or expended.
 - iii. Level II and III recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
 - iv. Level III recipients and subrecipients shall have a single or program-specific audit prepared by an independent CPA firm in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.
- c. All reports shall be filed with the Department in the format and method specified by the Department no later than three (3) months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to the Department no later than nine (9) months after the end of the recipient's fiscal year.
- d. Agency-established reporting requirements to meet the standards set forth in Paragraph (b) of this Rule shall be specified in each recipient's contract.
- e. Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable charges to State and federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 C.F.R. Part 200. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.
- f. Notwithstanding the provisions of this Subchapter, a recipient may satisfy the reporting requirements of Subparagraph (b)(4) of this Rule by submitting a copy of the report required under federal law with respect to the same funds.

2. State Agency Grant Certification – No Overdue Tax Debts Form

The Grantee agrees to complete a sworn written statement pursuant to N.C.G.S. § 143C-23(c), stating that the Grantee does not have any overdue tax debts, as defined by N.C.G.S. § 105-243.1, at the federal, State, or local level. A

copy of a form statement is attached as Exhibit C. The Grantee must complete the statement on the Grantee's letterhead and attach to this RIA Agreement as Exhibit D and as part of the execution of this RIA Agreement.

H. PROJECT RECORDS/AUDITS

The Grantee, and its contractor(s), 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. Once per calendar year, with thirty (30) days advance written notice to the Grantee, the Grantee will allow the Department to audit all books, records, and accounts pertaining to the Project including books, documents, papers, accounting records, and such other evidence, either in hard copy or electronic form as may be appropriate to substantiate costs incurred under this RIA Agreement. Said audit will occur during normal business hours of the Grantee and at the cost of the Department and/or Office of the State Auditor. In accordance with Title 09 of the North Carolina Administrative Code (N.C.A.C.) 03M.0703, the Grantee shall make such materials available at its office at all reasonable times during the contract period, and for five (5) years, or if with a railroad, three (3) years, respectively or until all audit exceptions have been resolved, whichever is longer, from the date of payment of the final voucher, for inspection and audit by the Department's Financial Management Section, Office of State Auditor, and/or any authorized representatives. The Grantee, and/or its contractor, shall permit the Department and/or Office of State Auditor full access to the Project site before, during, and after construction, provided such parties shall use reasonable efforts not to interfere with the Corporation's use of the Project site.

I. DEPARTMENT CONFLICT OF INTEREST

No member, officer, or employee of the Department shall have any interest, direct or indirect, in this RIA Agreement or the proceeds there from.

J. GRANTEE CONFLICT OF INTEREST

Upon requesting any payment under this RIA Agreement, the Grantee shall file with the Department pursuant to N.C.G.S. § 143C-6-23(b) a copy of the Grantee's policy addressing conflicts of interest that may arise involving the Grantee'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 Grantee's employees or members of its board or other governing body, from the Grantee's disbursing of State funds and shall include actions to be taken by the Grantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy must be filed before the Department will disburse the grant funds.

K. CIVIL RIGHTS ACT

The Grantee and 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.

L. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this RIA Agreement, the Grantee shall comply with all applicable federal and State laws related to discrimination of employees or applicants for employment.

M. NOTICES

All notices, requests, or other communications 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 Party's respective initial Contract Administrators are set out below. Any 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 Parties.

For the Department:

IF DELIVERED BY US POSTAL SERVICE:	IF DELIVERED BY ANY OTHER MEANS:
Neil Perry, Rail Planning Manager Planning & Development Branch NCDOT Rail Division 1553 Mail Service Center Raleigh, NC 27699-1553 Telephone: 919-707-4711 Fax: 919-715-6580 Email: nlperry@ncdot.gov	Neil Perry, Rail Planning Manager Planning & Development Branch NCDOT Rail Division 1 S Wilmington Street, Room 555 Raleigh, NC 27601

For the Grantee:

IF DELIVERED BY US POSTAL SERVICE:	IF DELIVERED BY ANY OTHER MEANS:
Telephone: Email:	

N. DEBARMENT

1. Department Debarment Policy

It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (federal or State). By execution of this RIA Agreement, the Grantee certifies that to its respective knowledge neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal or State Department or Agency and that it will not knowingly enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction.

2. Grantee Debarment Policy

Per Appendix XI to Part 200, the Compliance Supplement of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, the Grantee is prohibited from contracting with or making sub-awards under transactions covered by this RIA 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 Twenty-Five Thousand Dollars (\$25,000) and all non-procurement transactions (e.g., sub-awards to sub-recipients). Contractors receiving individual awards for Twenty-Five Thousand Dollars (\$25,000) or more and all sub-recipients must certify that the organization and its principals are not suspended or debarred. The Grantee may rely upon the certification unless it knows that the certification is erroneous. The Grantee agrees that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by federal department or agency.

O. INTEGRATION CLAUSE

This RIA Agreement and the terms included herein represent the entire and integrated agreement between the Parties and supersedes prior negotiations, representations or agreements, either written or oral, with respect to all matters pertaining to the work for this Project(s).

P. PARTIES AUTHORIZED TO EXECUTE

The Parties and any purported agent signing for a Party hereby acknowledge that the individual executing this RIA Agreement on their behalf is authorized to execute this RIA Agreement on their behalf and to bind the respective entities to the terms contained herein and that he/she has read this RIA Agreement, conferred with his/her attorney, and fully understands its contents.

A copy or facsimile copy of the signature of any Party shall be deemed an original with each fully executed copy of this RIA Agreement as binding as an original, and the Parties agree that this RIA Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the RIA Agreement.

Q. FORCE MAJEURE

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, pandemic, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

R. EXHIBITS

See drawings attached as Exhibit A (Cost Estimate and Premises), Exhibit B (Industry Commitment Form), Exhibit C (State Grant Certification – No Overdue Tax Debt), Exhibit D (Grantee’s No Overdue Tax Debt Verification), Exhibit E (Rail Freight Service Provision), Exhibit F (Industry Safety Pledge), and Exhibit G (Property Easement Certification) incorporated herein as reference.

S. HYPERLINKS

This RIA Agreement includes, refers to, or makes available hyperlinks to other websites or content on the Internet that are owned and/or maintained by third parties. Such links are provided as information only. The Department will make reasonable efforts to ascertain that linked sites and links are up to date. However, such linked websites or content are not under the control of the Department, and the Department does not vouch for or assume responsibility for the material contained on those sites or their privacy practices. Grantee is advised to verify if the regulation or policy linked to remains current and consult Department if any information is in question.

T. E-VERIFY

E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program, used to verify the work authorization of newly hired employees pursuant to federal law. The Parties warrant that they and any subcontractor performing work under this RIA Agreement: (i) uses E-Verify if required to do so by North Carolina law; and (ii) otherwise complies with the requirements of N.C.G.S. §§ 64-25 to -38. A breach of this warranty by any Party will be considered a breach of this RIA Agreement, which entitles the other Parties to terminate this RIA Agreement, without penalty, upon notice to the breaching Party.

U. ETHICS PROVISION

By Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, it is unlawful for any vendor or contractor (i.e., architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor) to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Cultural Resources, Environment and Natural Resources, Health and Human Services, Public Safety, Revenue, Transportation, and the Office of the Governor).

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this RIA Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this RIA Agreement have been complies with on the part of the Grantee.

IN WITNESS WHEREOF, this RAIL INDUSTRIAL ACCESS AGREEMENT has been executed, the last day and year heretofore set out below, on the part of the Department and the Grantee by authority duly given.

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this RIA Agreement, you attest, for your -entire organization and its employees or agents, that you are not aware that any gift in violation of N.C.G.S. § 133-32 and Executive Order 24 has been offered, accepted, or promised by any employees of your organization.

WITNESS

NAME OF COMPANY

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

SEAL

FEDERAL TAX IDENTIFICATION NUMBER

Name of Company

MAILING ADDRESS

Name of Company

Attn: [Contact Person]

[Job Title]

[Email]

{Phone]

IN WITNESS WHEREOF, this RAIL INDUSTRIAL ACCESS AGREEMENT has been executed, the last day and year heretofore set out below, on the part of the Department and the Grantee by authority duly given.

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WITNESS

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

BY: _____

BY: _____

NAME: _____

NAME: Julie White

TITLE: _____

Deputy Secretary of Multi-Modal
Transportation

DATE: _____

DATE: _____

MAILING ADDRESS

North Carolina Department of Transportation
Rail Division, Planning & Development
Branch
1553 Mail Service Center
Raleigh, North Carolina 27699-1553
ATTN: Neil Perry
Rail Planning Manager
nlperry@ncdot.gov

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____
(Date)

ATTACHMENT 1

MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE (Railroads):

(10-16-07)(Rev. 1-15-19)

102-15(J)

SP1 G68

Description

The purpose of this Special Provision is to carry out the North Carolina Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with State funds.

Definitions

Additional MBE/WBE Subcontractors - Any MBE/WBE submitted at the time of bid that will not be used to meet the Combined MBE/WBE Goal. No submittal of a Letter of Intent is required.

Combined MBE/WBE Goal: A portion of the total contract, expressed as a percentage that is to be performed by committed MBE/WBE subcontractors.

Committed MBE/WBE Subcontractor - Any MBE/WBE submitted at the time of bid that is being used to meet the Combined MBE/WBE goal by submission of a Letter of Intent. Or any MBE or WBE used as a replacement for a previously committed MBE or WBE firm.

Contract Goal Requirement - The approved participation at time of award, but not greater than the advertised combined MBE/WBE contract goal.

Goal Confirmation Letter - Written documentation from the Railroad to the bidder confirming the Contractor's approved, committed participation along with a listing of the committed MBE and WBE firms.

Local Government Agencies (Railroad) - The entity letting the contract.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

MBE Participation (Anticipated) - A portion of the total contract, expressed as a percentage that is anticipated to be performed by committed MBE subcontractor.

Minority Business Enterprise (MBE) - A firm certified as a Disadvantaged Minority-Owned Business Enterprise through the North Carolina Unified Certification Program.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and

petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

Replacement / Substitution – A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) MBE/WBE firm.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for MBE/WBE certification. The MBE/WBE program follows the same regulations as the federal Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26.

Standard Specifications - The general term comprising all directions, provisions, and requirements contained or referred to in the *North Carolina Department of Transportation Standard Specifications for Roads and Structures* and any subsequent revisions or additions to such book.

United States Department of Transportation (USDOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

WBE Participation (Anticipated) - A portion of the total contract, expressed as a percentage that is anticipated to be performed by committed WBE subcontractor.

Women Business Enterprise (WBE) - A firm certified as a Disadvantaged Women-Owned Business Enterprise through the North Carolina Unified Certification Program.

Forms and Websites Referenced in this Provision

Payment Tracking System - On-line system in which the Contractor enters the payments made to MBE and WBE subcontractors who have performed work on the project.
<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

DBE-IS Subcontractor Payment Information - Form for reporting the payments made to all MBE/WBE firms working on the project. This form is for paper bid projects only.
<https://connect.ncdot.gov/business/Turnpike/Documents/Form%20DBE-IS%20Subcontractor%20Payment%20Information.pdf>

RF-1 MBE/WBE Replacement Request Form - Form for replacing a committed MBE or WBE.
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Form%20and%20Instructions.pdf>

SAF Subcontract Approval Form - Form required for approval to sublet the contract.
<https://connect.ncdot.gov/projects/construction/Construction%20Forms/SAF%20Form%20-%20Subcontract%20Approval%20Form%20Revised%2004-19.xlsm>

JC-1 Joint Check Notification Form - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.

<http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf>

Letter of Intent - Form signed by the Contractor and the MBE/WBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed MBE/WBE for the estimated amount (based on quantities and unit prices) listed at the time of bid.

<http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf>

Listing of MBE and WBE Subcontractors Form - Form for entering MBE/WBE subcontractors on a project that will meet the Combined MBE/WBE goal. This form is for paper bids only.

[https://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/09%20MBE-WBE%20Subcontractors%20\(State\).docx](https://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/09%20MBE-WBE%20Subcontractors%20(State).docx)

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where MBEs and WBEs quoted on the project. This sheet is submitted with good faith effort packages.

<http://connect.ncdot.gov/business/SmallBusiness/Documents/DBE%20Subcontractor%20Quote%20Comparison%20Example.xls>

Combined MBE/WBE Goal

The Combined MBE/WBE Goal for this project is **[number to the nearest tenth] %**

The Combined Goal was established utilizing the following anticipated participation for Minority Business Enterprises and Women Business Enterprises:

(A) Minority Business Enterprises [number to the nearest tenth] %

- (1) *If the anticipated MBE participation is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that MBEs participate in at least the percent of the contract as set forth above.
- (2) *If the anticipate MBE participation is zero*, the Contractor shall make an effort to recruit and use MBEs during the performance of the contract. Any MBE participation obtained shall be reported to the Railroad.

(B) Women Business Enterprises [number to the nearest tenth] %

- (1) *If the anticipated WBE participation is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that WBEs participate in at least the percent of the contract as set forth above.

- (2) *If the anticipated WBE participation is zero*, the Contractor shall make an effort to recruit and use WBEs during the performance of the contract. Any WBE participation obtained shall be reported to the Railroad.

The Bidder is required to submit participation to only meet the Combined MBE/WBE Goal. The Combined Goal may be met by submitting all MBE participation, all WBE participation, or a combination of MBE and WBE participation.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the NCDOT and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the Directory as MBE and WBE certified shall be used to meet the Combined MBE/WBE Goal. The Directory can be found at the following link.

<https://www.ebs.nc.gov/VendorDirectory/search.html?s=fn&a=new>

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of MBE/WBE Subcontractors

At the time of bid, bidders shall submit all MBE and WBE participation that they anticipate to use during the life of the contract. Only those identified to meet the Combined MBE/WBE Goal will be considered committed, even though the listing shall include both committed MBE/WBE subcontractors and additional MBE/WBE subcontractors. Any additional MBE/WBE subcontractor participation submitted at the time of bid will be used toward overall race-neutral goals. Only those firms with current MBE and WBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of MBE and WBE participation. The Contractor shall indicate the following required information:

(A) *If the Combined MBE/WBE Goal is more than zero,*

- (1) Bidders, at the time the bid proposal is submitted, shall submit a listing of MBE/WBE participation, including the names and addresses on *Listing of MBE and WBE Subcontractors* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the MBE and WBE participation for the contract.
- (2) If bidders have no MBE or WBE participation, they shall indicate this on the *Listing of MBE and WBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety. **Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have MBE and WBE participation indicated on the appropriate form will not be read publicly during the opening of bids. Railroad will not consider these bids for award and the proposal will be rejected.

- (3) The bidder shall be responsible for ensuring that the MBE/WBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that MBE's or WBE's participation will not count towards achieving the Combined MBE/WBE Goal.
- (B) *If the Combined MBE/WBE Goal is zero*, entries on the *Listing of MBE and WBE Subcontractors* are not required for the zero goal, however any MBE or WBE participation that is achieved during the project shall be reported in accordance with requirements contained elsewhere in the special provision.

MBE or WBE Prime Contractor

When a certified MBE or WBE firm bids on a contract that contains a Combined MBE/WBE Goal, the firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a MBE or WBE bidder on a contract will meet the Combined MBE/WBE Goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the MBE or WBE bidder and any other similarly certified subcontractors will count toward the goal. The MBE or WBE bidder shall list itself along with any MBE or WBE subcontractors, if any, in order to receive credit toward the goal.

MBE/WBE prime contractors shall also follow Sections A or B listed under *Listing of MBE/WBE Subcontractors* just as a non-MBE/WBE bidder would.

Written Documentation – Letter of Intent

The bidder shall submit written documentation for each MBE/WBE that will be used to meet the Combined MBE/WBE Goal of the contract, indicating the bidder's commitment to use the MBE/WBE in the contract. This documentation shall be submitted on the NCDOT's form titled *Letter of Intent*.

The documentation shall be received in the office of the Railroad no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Railroad no later than 10:00 a.m. on the next official state business day.

If the bidder fails to submit the Letter of Intent from each committed MBE and WBE to be used toward the Combined MBE/WBE Goal, or if the form is incomplete (i.e., both signatures are not present), the MBE/WBE participation will not count toward meeting the Combined MBE/WBE Goal. If the lack of this participation drops the commitment below either the Combined MBE/WBE Goal, the Contractor shall submit evidence of good faith efforts for the goal not met, completed in its entirety, to the Railroad no later than 2:00 p.m. of the eighth calendar day following opening of bids, unless the eighth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Railroad no later than 10:00 a.m. on the next official state business day.

Submission of Good Faith Effort

If the bidder fails to meet or exceed the Combined MBE/WBE Goal, the apparent lowest responsive bidder shall submit to the Railroad documentation of adequate good faith efforts made to reach that specific goal.

One complete set and two copies of this information shall be received in the office of the Railroad no later than 2:00 p.m. of the fifth calendar day following opening of bids, unless the fifth day falls on Saturday, Sunday or an official state holiday. In that situation, it is due in the office of the Railroad no later than 10:00 a.m. on the next official state business day.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of MBE/WBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with MBE/WBE Goals More Than Zero

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient MBE/WBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought MBE/WBE participation. Mere *pro forma* efforts are not considered good faith efforts.

The Railroad will consider the quality, quantity, and intensity of the different kinds of efforts a bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goals and are not intended to be exclusive or exhaustive, nor is it intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising, written notices, use of verifiable electronic means through the use of the NCDOT Directory of Transportation Firms) the interest of all certified MBEs/WBEs that are also prequalified subcontractors. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the MBEs/WBEs to respond to the solicitation. Solicitation shall provide the opportunity to MBEs/WBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up initial solicitations.

- (B) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the Combined MBE/WBE Goal will be achieved.
 - (1) Where appropriate, break out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - (2) Negotiate with subcontractors to assume part of the responsibility to meet the contract MBE/WBE goals when the work to be sublet includes potential for MBE/WBE participation (2nd and 3rd tier subcontractors).
- (C) Providing interested certified MBEs/WBEs that are also prequalified subcontractors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (D)
 - (1) Negotiating in good faith with interested MBEs/WBEs. It is the bidder's responsibility to make a portion of the work available to MBE/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE subcontractors and suppliers, so as to facilitate MBE/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs/WBEs to perform the work.
 - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidding contractors are not, however, required to accept higher quotes from MBEs/WBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
- (F) Making efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.

- (G) Making efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MBEs/WBEs. Contact within 7 days from the bid opening NCDOT's Business Opportunity and Work Force Development Unit at BOWD@ncdot.gov to give notification of the bidder's inability to get MBE or WBE quotes.
- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonably good faith efforts to meet the contract goal.

In addition, the Railroad may take into account the following:

- (1) Whether the bidder's documentation reflects a clear and realistic plan for achieving the Combined MBE/WBE Goal.
- (2) The bidders' past performance in meeting the MBE and WBE goals.
- (3) The performance of other bidders in meeting the advertised goal. For example, when the apparent successful bidder fails to meet the goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the advertised goal, but meets or exceeds the average MBE and WBE participation obtained by other bidders, the Railroad may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made a good faith effort.

If the Railroad does not award the contract to the apparent lowest responsive bidder, the Railroad reserves the right to award the contract to the next lowest responsive bidder that can satisfy to the Railroad that the Combined Goal can be met or that an adequate good faith effort has been made to meet the advertised goal.

Non-Good Faith Appeal

The Railroad will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor wishes to appeal the determination made by the Committee, they shall provide written notification to the Railroad. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting MBE/WBE Participation Toward Meeting MBE/WBE Goals

(A) Participation

The total dollar value of the participation by a committed MBE/WBE will be counted toward the contract goal requirements. The total dollar value of participation by a committed MBE/WBE will be based upon the value of work actually performed by the MBE/WBE and the actual payments to MBE/WBE firms by the Contractor.

(B) Joint Checks

Prior notification of joint check use shall be required when counting MBE/WBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the NCDOT's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A MBE/WBE may enter into subcontracts. Work that a MBE subcontracts to another MBE firm may be counted toward the anticipated MBE participation. The same holds for work that a WBE subcontracts to another WBE firm. Work that a MBE/WBE subcontracts to a non-MBE/WBE firm does not count toward the contract goal requirement. It should be noted that every effort shall be made by MBE and WBE contractors to subcontract to the same certification (i.e., MBEs to MBEs and WBEs to WBEs), in order to fulfill the MBE or WBE participation breakdown. This, however, may not always be possible due to the limitation of firms in the area. If the MBE or WBE firm shows a good faith effort has been made to reach out to similarly certified firms and there is no interest or availability, and they can get assistance from other certified firms, the Engineer will not hold the prime responsible for meeting the individual MBE or WBE breakdown. If a MBE or WBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the MBE or WBE is not performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the Railroad. The Railroad's decision on the rebuttal of this presumption may be subject to review by the Office of Inspector General, NCDOT.

(D) Joint Venture

When a MBE or WBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the MBE or WBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the MBE or WBE performs with its forces.

(E) Suppliers

A contractor may count toward its MBE/WBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a MBE or WBE regular dealer and 100 percent of such expenditures from a MBE or WBE manufacturer.

(F) Manufacturers and Regular Dealers

A contractor may count toward its MBE/WBE requirement the following expenditures to MBE/WBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a MBE/WBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a MBE/WBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) MBE/WBE Utilization

The Contractor may count toward its contract goal requirement only expenditures to MBEs and WBEs that perform a commercially useful function in the work of a contract. A MBE/WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE/WBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a MBE/WBE is performing a commercially useful function, the Railroad will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the MBE/WBE credit claimed for its performance of the work, and any other relevant factors. If it is determined that a MBE or WBE is not performing a Commercially Useful Function, the contractor may present evidence to rebut this presumption.

(B) MBE/WBE Utilization in Trucking

The following factors will be used to determine if a MBE or WBE trucking firm is performing a commercially useful function.

- (1) The MBE/WBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting the Combined MBE/WBE Goal.
- (2) The MBE/WBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The MBE/WBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The MBE may subcontract the work to another MBE firm, including an owner-operator who is certified as a MBE. The same holds true that a WBE may subcontract the work to another WBE firm, including an owner-operator who is certified as a WBE. When this occurs, the MBE or WBE who subcontracts work receives credit for the total value of the transportation services the subcontracted MBE or WBE provides on the contract. It should be noted that every effort shall be made by MBE and WBE contractors to subcontract to the same certification (i.e., MBEs to MBEs and WBEs to WBEs), in order to fulfill the participation breakdown. This, however, may not always be possible due to the limitation of firms in the area. If the MBE or WBE firm shows a good faith effort has been made to reach out to similarly certified transportation service providers and there is no interest or availability, and they can get assistance from other certified providers, the Railroad will not hold the prime responsible for meeting the individual MBE or WBE participation breakdown.
- (5) The MBE/WBE may also subcontract the work to a non-MBE/WBE firm, including from an owner-operator. The MBE/WBE who subcontracts the work to a non-MBE/WBE is entitled to credit for the total value of transportation services provided by the non-MBE/WBE subcontractor not to exceed the value of transportation services provided by MBE/WBE-owned trucks on the contract. Additional participation by non-MBE/WBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the MBE/WBE and the Contractor will not count towards the MBE/WBE contract requirement.
- (6) A MBE/WBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the MBE/WBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent

of the MBE/WBE, so long as the lease gives the MBE/WBE absolute priority for use of the leased truck. This type of lease may count toward the MBE/WBE's credit as long as the driver is under the MBE/WBE's payroll.

- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the MBE/WBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

MBE/WBE Replacement

When a Contractor has relied on a commitment to a MBE or WBE subcontractor (or an approved substitute MBE or WBE subcontractor) to meet all or part of a contract goal requirement, the contractor shall not terminate the MBE/WBE subcontractor for convenience. This includes, but is not limited to, instances in which the Contractor seeks to perform the work of the terminated subcontractor with another MBE/WBE subcontractor, a non-MBE/WBE subcontractor, or with the Contractor's own forces or those of an affiliate.

The Contractor must give notice in writing both by certified mail and email to the MBE/WBE subcontractor, with a copy to the Railroad of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor must give the MBE/WBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution. If the MBE/WBE subcontractor objects to the intended termination/substitution, the MBE/WBE, within five (5) business days must advise the Contractor and the Railroad of the reasons why the action should not be approved. The five-day notice period shall begin on the next business day after written notice is provided to the MBE/WBE subcontractor.

A committed MBE/WBE subcontractor may only be terminated after receiving the Railroad's written approval based upon a finding of good cause for the proposed termination and/or substitution. For purposes of this section, good cause shall include the following circumstances:

- (a) The listed MBE/WBE subcontractor fails or refuses to execute a written contract;
- (b) The listed MBE/WBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the MBE/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (c) The listed MBE/WBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (d) The listed MBE/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (e) The listed MBE/WBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (f) The listed MBE/WBE subcontractor is not a responsible contractor;
- (g) The listed MBE/WBE voluntarily withdraws from the project and provides written notice of withdrawal;

- (h) The listed MBE/WBE is ineligible to receive MBE/WBE credit for the type of work required;
- (i) A MBE/WBE owner dies or becomes disabled with the result that the listed MBE/WBE contractor is unable to complete its work on the contract;
- (j) Other documented good cause that compels the termination of the MBE/WBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a MBE/WBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the MBE/WBE contractor was engaged or so that the prime contractor can substitute another MBE/WBE or non-MBE/WBE contractor after contract award.

The Contractor shall comply with the following for replacement of a committed MBE/WBE:

(A) Performance Related Replacement

When a committed MBE/WBE is terminated for good cause as stated above, an additional MBE/WBE that was submitted at the time of bid may be used to fulfill the MBE/WBE commitment to meet the Combined MBE/WBE Goal. A good faith effort will only be required for removing a committed MBE/WBE if there were no additional MBE/WBEs submitted at the time of bid to cover the same amount of work as the MBE/WBE that was terminated.

If a replacement MBE/WBE is not found that can perform at least the same amount of work as the terminated MBE/WBE, the Contractor shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to MBE/WBEs that their interest is solicited in contracting the work defaulted by the previous MBE/WBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with MBE/WBEs for specific subbids including, at a minimum:
 - (a) The names, addresses, and telephone numbers of MBE/WBEs who were contacted.
 - (b) A description of the information provided to MBE/WBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why MBE/WBE quotes were not accepted.
- (4) Efforts made to assist the MBE/WBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed MBE/WBE is decertified by the NCDOT after the SAF (*Subcontract Approval Form*) has been received by the Railroad, the Railroad will

not require the Contractor to solicit replacement MBE/WBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.

- (2) When a committed MBE/WBE is decertified prior to the Railroad receiving the SAF (*Subcontract Approval Form*) for the named MBE/WBE firm, the Contractor shall take all necessary and reasonable steps to replace the MBE/WBE subcontractor with another MBE/WBE subcontractor to perform at least the same amount of work to meet the Combined MBE/WBE goal requirement. If a MBE/WBE firm is not found to do the same amount of work, a good faith effort must be submitted to Railroad (see A herein for required documentation).

All requests for replacement of a committed MBE/WBE firm shall be submitted to the Railroad for approval on Form RF-1 (*DBE Replacement Request*). If the Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months.

Changes in the Work

When the Railroad makes changes that result in the reduction or elimination of work to be performed by a committed MBE/WBE, the Contractor will not be required to seek additional participation. When the Railroad makes changes that result in additional work to be performed by a MBE/WBE based upon the Contractor's commitment, the MBE/WBE shall participate in additional work to the same extent as the MBE/WBE participated in the original contract work.

When the Railroad makes changes that result in extra work, which has more than a minimal impact on the contract amount, the Contractor shall seek additional participation by MBEs/WBEs unless otherwise approved by the Railroad.

When the Railroad makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed MBE/WBE, the Contractor shall seek participation by MBEs/WBEs unless otherwise approved by the Railroad.

When the Contractor requests changes in the work that result in the reduction or elimination of work that the Contractor committed to be performed by a MBE/WBE, the Contractor shall seek additional participation by MBEs/WBEs equal to the reduced MBE/WBE participation caused by the changes.

Reports and Documentation

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a MBE/WBE subcontractor. The Railroad reserves the right to require copies of actual subcontract agreements involving MBE/WBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning

construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a MBE/WBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the Railroad a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for MBE/WBE credit.

Reporting Minority and Women Business Enterprise Participation

The Contractor shall provide the Railroad with an accounting of payments made to all MBE/ WBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Railroad for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to MBEs/WBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from being approved for further work on future projects until the required information is submitted.

Contractors reporting transportation services provided by non-MBE/WBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Railroad can request written verification of subcontractor payments.

The Contractor shall report the accounting of payments on the NCDOT's DBE-IS (*Subcontractor Payment Information*) with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *2018 Standard Specifications* may be cause to disqualify the Contractor.

EXHIBIT A

EXHIBIT B

**RAIL INDUSTRIAL ACCESS PROGRAM - NCDOT RAIL DIVISION
INDUSTRY COMMITMENT FORM**

EXHIBIT C

STATE AGENCY GRANT CERTIFICATION – NO OVERDUE TAX DEBTS

This certification form is included with this RIA Agreement as a separate form.

Instructions: Railroad should complete this certification for all state funds received. 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 State Budget and Management.

The requirements of N.C.G.S. § 143C-6-23(c) states:

(c) No Overdue Tax Debts. - Every grantee shall file with the State agency or department disbursing funds to the grantee a written statement completed by that grantee's board of directors or other governing body stating that the grantee does not have any overdue tax debts, as defined by G.S. 105-243.1, at the federal, State, or local level. The written statement shall be made under oath and shall be filed before the disbursing State agency or department may disburse the grant funds. A person who makes a false statement in violation of this subsection is guilty of a criminal offense punishable as provided by G.S. 143C-10-1.

Office of Inspector General Interpretation:

The statement should be signed by those individuals/members charged with governance over the railroad organization whether that be members of a formal board of directors or other named governing body. All organization structures are not the same, therefore the individual(s) signing the statement may vary on case-by-case basis. If the railroad organization does not have an official Board Chair, it seems as though other presiding members of the Board or company charged with governance should be able to complete the statement.

EXHIBIT D

STATE AGENCY GRANT CERTIFICATION – NO OVERDUE TAX DEBTS FORM

EXHIBIT E

**RAIL INDUSTRIAL ACCESS PROGRAM – NCDOT RAIL DIVISION
RAILROAD COMMITMENT FORM**

EXHIBIT F

**RAIL INDUSTRIAL ACCESS PROGRAM – NCDOT RAIL DIVISION
INDUSTRY SAFETY PLEDGE**

EXHIBIT G
PROPERTY EASEMENT CERTIFICATION