

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

GRANTEE: Northern Virginia Transportation Commission

July 1, 2008

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MASTER AGREEMENT FOR THE USE OF COMMONWEALTH TRANSPORTATION FUNDS

INTRODUCTION

THIS MASTER AGREEMENT, hereinafter referred to as "AGREEMENT", is made and executed as of July 1, 2008 between the Virginia Department of Rail and Public Transportation, hereinafter referred to as the "DEPARTMENT", acting by and through its Director, and the Northern Virginia Transportation Commission, hereinafter referred to as the "GRANTEE." This AGREEMENT sets out the terms and conditions for the receipt of grants supported by the Commonwealth Transportation Funds and shall govern and be incorporated by reference in all Project Agreements approved by the Department.

By signing this AGREEMENT, the GRANTEE agrees to adhere to separate requirements issued by the DEPARTMENT as follows:

- A. Grant administration requirements to administer the grant after award
- B. Maintaining Asset Inventory through the On-Line Grant Administration System (OLGA)
- C. Performance Reporting through OLGA

ARTICLE 1. DEFINITIONS

As used in this AGREEMENT:

A. **Application** means the proposal submitted by or on behalf of the GRANTEE for State financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted by the DEPARTMENT and approved by the Commonwealth Transportation Board.

- B. **Contractor** means private contractor(s), including consultants, which may be engaged by GRANTEE to perform work.
- C. **Designated Representative(s)** means a person or persons appointed by the GRANTEE or the DEPARTMENT to represent, in whole or in part, the party in issues associated with this AGREEMENT and subordinate project agreements.
- D. **Director** means the Director of the DEPARTMENT.
- E. **Force Majeure Event(s)** means fire, flood, war, rebellion, riots, strikes, or acts of God, which may effect or prevent either party from timely or properly performing its obligations under this AGREEMENT.
- F. **Project Agreement** means an agreement approved by the DEPARTMENT that includes the total cost of the project, the DEPARTMENT and the GRANTEE participation, project time period, and any subsequent amendments thereto. Project Agreements are subordinate to and shall incorporate by reference all terms and conditions of this AGREEMENT.
- G. **Project Equipment** means any tangible personal property with a value of \$5,000 or more.
- H. **Project Facilities** means any real property constructed or purchased with State financial assistance under this AGREEMENT.
- I. **Project Reimbursement Form** means the form provided by the DEPARTMENT to the GRANTEE to use for reimbursement of eligible project costs incurred and paid by the GRANTEE.
- J. **Progress Report** means a written or electronic report which includes the progress-to-date on the project; unanticipated problems and proposed resolution; and anticipated progress during the next monthly or quarterly reporting period.

ARTICLE 2. PROGRAMS AND FUNDING

Section 2.1 This AGREEMENT contains the various requirements that must be adhered to by the grantee for all State funds received from the DEPARTMENT.

Section 2.2 Funding is subject to annual appropriation by the General Assembly and allocation by the Commonwealth Transportation Board. For any of the grants administered by the DEPARTMENT, the Commonwealth Transportation Board (CTB) or the Virginia General Assembly may change the percentage of the local share that can be financed by State aid for public transportation to a higher or lower percentage than that set forth in the project agreement. In the event such a change occurs, the applicable percentage will be the new percentage set by the CTB or the General Assembly. All expenditures incurred prior to the date of the change will be governed by the previous share.

Section 2.3 In the event that the GRANTEE receives subsequent allocation(s) of State funding from another source or Federal funding applicable to projects governed by this AGREEMENT, the allocation(s) of State funds shall be reduced by the amount of the subsequent allocation(s). GRANTEES shall notify the DEPARTMENT in writing when subsequent allocations are received.

Section 2.4 The GRANTEE agrees that it will provide funds from sources other than Federal funds (except as may otherwise be authorized by Federal statute), in an amount sufficient, together with the Grant, to assure payment of the total project cost. The GRANTEE further agrees that no refund or reduction of the amount so provided will be made at any time, unless there is at the same time a refund to the DEPARTMENT of a proportional amount of the Grant funds being refunded or reduced. The GRANTEE'S obligation to provide the local share is calculated on the project as a whole.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

Section 3.1 Payment to the GRANTEE of the DEPARTMENT'S share of the project cost shall be made on a schedule for project agreements involving operating costs and on a reimbursement basis for

all other project agreements. Reimbursement basis means the cost has been incurred during the time period specified in the Project Agreement and paid by the GRANTEE prior to requesting reimbursement from the DEPARTMENT. Payment of State funds under this AGREEMENT shall not exceed the sum identified in the Project Agreement or amendments thereto. The final reimbursement request must be submitted to the DEPARTMENT within 90 calendar days following the end date of the project.

Section 3.2 The GRANTEE shall submit reimbursement requests no more frequently than once a month. Reimbursement forms shall be submitted using the form provided by the DEPARTMENT. Upon approval by the DEPARTMENT for payment, reimbursement will be made within 30 calendar days. Reimbursement forms shall be accompanied by the most recent GRANTEE progress report.

Section 3.3 Incomplete reimbursement requests or those not adequately supported with both a progress report and supporting documentation may result in a delayed or a partial reimbursement to the GRANTEE.

Section 3.4 Any expenditures reimbursed to the GRANTEE by the DEPARTMENT subsequently found not to be in accordance with the provisions of this AGREEMENT, related project agreements, applicable Federal, State, or local law will be repaid to the DEPARTMENT by the GRANTEE within 60 calendar days of such notice.

Section 3.5 The GRANTEE is responsible for payment of all contractors. The GRANTEE shall attach to each invoice copies of contractor's paid invoices.

Section 3.6 With the exception of debt service specifically identified in a project agreement, a project amendment may not be made for the purpose of providing any reimbursement for any interest payment or charge made pursuant to this Article, nor may any cost reimbursement claim include any amount for reimbursement for any such interest charge.

ARTICLE 4. ALLOWABLE COSTS

Section 4.1 The GRANTEE agrees to incur obligations against and make disbursements of Project funds in conformance with Project Agreements and all provisions of this AGREEMENT.

Notwithstanding any other provision in this AGREEMENT, funding provided pursuant to Project Agreements shall be for the reimbursement of eligible project costs as listed in the project agreements and for no other purpose. Funds shall be spent on a pro rata basis as identified in the project agreements with respect to each partner's funding share. All purchases made as a matter of this AGREEMENT shall be charged at the actual cost(s) to the GRANTEE with no markups.

Section 4.2 Eligible project costs must meet the following requirements:

- A. Be necessary in order to accomplish the activities in the approved Project Agreement;
- B. Be reasonable in amount for the goods or services purchased;
- C. Be actual net costs to the GRANTEE (i.e., the price paid minus any refunds, rebates, or other items of value received by the GRANTEE which have the effect of reducing the cost actually incurred and paid);
- D. Be incurred and paid during the time period specified in the approved Project Agreement;
- E. Be in accordance with the Federal Office of Management and Budget Circular A-133;
- F. Indirect costs are an allowable expense only if they are based on a cost allocation plan that has been approved in advance by the DEPARTMENT.
- G. The DEPARTMENT shall make the final determination as to what costs are eligible.

ARTICLE 5. LAPSE OF FUNDS

Section 5.1 A project agreement obligates the GRANTEE to undertake and complete a project within the period of availability as defined in the project agreement. Funds will cease to be available at the end

of the project's period of availability. Expenditures incurred on or before the project end date will be reimbursed up to 90 days after the end date.

ARTICLE 6. MAINTENANCE OF RECORDS

Section 6.1 The GRANTEE and its subcontractors shall maintain all appropriate books, documents, papers, accounting records, and any other evidence supporting their activities and the costs incurred. These records shall be kept in accordance with commonly accepted business procedures. Such information shall be made available for audit and inspection at their respective offices at all reasonable times during the Agreement period and for a period of three years from the date of final payment by the DEPARTMENT to the GRANTEE. Copies of such information shall be furnished to the DEPARTMENT upon request.

ARTICLE 7. AUDIT AND INSPECTION OF RECORDS

Section 7.1 The GRANTEE and its subcontractors shall permit the authorized representatives of the DEPARTMENT to inspect and audit all records of the GRANTEE and its subcontractors relating to the performance of this AGREEMENT or any Project Agreement.

Section 7.2 All GRANTEES must follow the requirements of OMB Circular A - 133, *Audits of States, Local Governments, and Non-Profit Organizations*. A Single Audit is required when an entity spends Federal funds of \$500,000 or more in a year. Recipients must maintain auditable records and adequate supporting documentation. Recipients spending less than \$500,000 of Federal assistance during any one fiscal year are not required to have a Single Audit performed unless specifically requested by DRPT. However, DRPT reserves the right to require any recipient of State funds, regardless of amount, to have an audit performed and to designate the scope of such audit.

Section 7.3 If an independent CPA, other auditor, DRPT, or any other party finds the recipient not to be in compliance with any provision of any grant agreement or any relevant Federal or State law or regulation, the recipient must provide a satisfactory corrective action plan to DRPT within 60 days of that finding. The scope of any audit conducted must include expenditures made by subrecipients of the grant, including consultants, subconsultants, and any other recipients of pass-through funds.

Section 7.4 The GRANTEE agrees that following the completion of any audit performed in accordance with this Article, it will promptly refund to the DEPARTMENT within 60 calendar days any payments that are found to be unsupported by acceptable records or in violation of any other provisions of this AGREEMENT or related Project Agreement. Acceptable records are defined as original documents (such as timesheets, invoices, etc.) that were used to generate amounts on the reimbursement forms submitted to the DEPARTMENT. The DEPARTMENT also may require the GRANTEE to furnish certified reports of all expenditures under any subcontracts.

Section 7.5 All GRANTEES must submit audited financial statements to the DEPARTMENT within 6 months following the GRANTEE'S fiscal year end. E-mail a .pdf copy to FrontDesk@drpt.virginia.gov or send a hard copy to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
1313 East Main Street, Suite 300
Richmond, VA 23219

ARTICLE 8. ANNUAL MANAGEMENT REPRESENTATION LETTER

Section 8.1 Every recipient of State financial assistance from DRPT must provide an annual management representation letter indicating management's responsibility for ensuring compliance with all provisions of all grant agreements and relevant Federal and State laws and regulations. In the management representation letter, the management should specifically assert its responsibility for:

- Complying with all of the requirements specified in the grant agreements, as well as all related and relevant Federal and State laws and regulations.
- Establishing and maintaining effective internal control over compliance.
- Evaluating any sub-recipient's compliance with grant requirements, or, if more appropriate, evaluating the sub-recipient's controls and procedures for ensuring compliance and detecting noncompliance.
- Disclosing all known instances of noncompliance to DRPT in writing.
- Making all compliance related documentation available to DRPT.
- Stating management's interpretations of any compliance requirements for which multiple interpretations are possible.
- Disclosing any communications from any regulatory agencies, internal auditors, independent auditors, and other financial practitioners concerning possible or potential noncompliance, including communications received through the date of the management representation letter.
- Disclosing any known noncompliance occurring subsequent to the date of the management representation letter, within one week after such noncompliance becomes known.

E-mail a .pdf copy to FrontDesk@drpt.virginia.gov or send a hard copy to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
1313 East Main Street, Suite 300
Richmond, VA 23219

ARTICLE 9. REQUEST FOR PROPOSALS AND SUBCONTRACTOR APPROVAL

Section 9.1 The DEPARTMENT reserves the right to review and approve, in advance, any request for proposals or solicitation to bid to any prospective contracting organizations. The DEPARTMENT also reserves the right to require that the GRANTEE not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to its rights, duties, obligations, or responsibilities under this AGREEMENT unless and until authorized in writing by the DEPARTMENT to do so.

ARTICLE 10. PROGRESS REPORTS

Section 10.1 GRANTEES must submit a written or electronic copy of their progress reports to their respective DEPARTMENT Program Manager, which includes the progress-to-date on the project; unanticipated problems and proposed resolution; and anticipated progress during the next monthly or quarterly reporting period. These progress reports must be submitted with each reimbursement request or at a minimum once a quarter.

ARTICLE 11. ASSIGNMENTS

Section 11.1 Assignment of any portion of this AGREEMENT shall have the prior written approval of the DEPARTMENT.

ARTICLE 12. TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 12.1 This AGREEMENT shall be effective immediately upon its execution.

Section 12.2 This AGREEMENT constitutes the entire and exclusive agreement between the parties relating to all specific matters covered herein. All prior or contemporaneous verbal or written

agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

Section 12.3 This AGREEMENT may be altered, amended, or revoked only by an instrument signed by both parties. Such signature may include electronic signatures using Personal Identification Number (PIN) based access.

ARTICLE 13. NOTICES AND DESIGNATED REPRESENTATIVE

Section 13.1 All notices or communications with respect to this AGREEMENT shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Department: Virginia Department of Rail and Public Transportation
1313 East Main Street, Suite 300
Richmond, VA 23219
Attention: Terry Brown, Manager of Financial Programming
terry.brown@drpt.virginia.gov

William S. Pittard, Chief Financial Officer
1313 East Main Street, Suite 300
Richmond, VA 23219
steve.pittard@drpt.virginia.gov

Nancy C. Auth, Senior Assistant Attorney General
Office of Attorney General
900 East Main Street
Richmond, VA 23219
NAuth@oag.state.va.us

Grantee:

NAME AND TITLE

ADDRESS

E-MAIL ADDRESS

With a copy to:

NAME AND TITLE

ADDRESS

E-MAIL ADDRESS

ARTICLE 14. TERMINATION OF AGREEMENT OR PROJECT AGREEMENT

This AGREEMENT or the subordinate Project Agreement shall be terminated upon the occurrence of any of the following:

Section 14.1 The GRANTEE may terminate the Project at any time by notifying the DEPARTMENT in writing 30 calendar days in advance. If such termination occurs, the GRANTEE shall repay the DEPARTMENT for all funds received according to the provisions of this Article.

Section 14.2 The GRANTEE may terminate the AGREEMENT at any time it is determined by Virginia law that the DEPARTMENT has materially breached this AGREEMENT and has failed to cure such breach within 90 calendar days. Should such occur, the GRANTEE shall be entitled to whatever remedies may be provided for by law or in equity. Furthermore, the GRANTEE will not be required to repay any funds that have been provided by DEPARTMENT pursuant to this AGREEMENT.

Section 14.3 Upon 30 calendar days notice to the GRANTEE, the DEPARTMENT may terminate, in whole or in part, the funding under this AGREEMENT at any time it is determined that GRANTEE has materially breached this AGREEMENT and has failed to cure said breach after 90 calendar days notice or if compliance within 90 calendar days is not reasonable as solely determined by the DEPARTMENT, then within such time period as the DEPARTMENT may agree. The DEPARTMENT shall notify the

GRANTEE promptly in writing of such a determination and the effective date of the termination. The GRANTEE may request reconsideration by notifying the DEPARTMENT within 30 calendar days of the date of the DEPARTMENT'S notification. The DEPARTMENT shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the DEPARTMENT will be final. If this AGREEMENT is terminated by the DEPARTMENT for the GRANTEE'S material breach, the GRANTEE will repay the DEPARTMENT all funds received for the Project. Such payment shall be made within 60 calendar days following notification by the DEPARTMENT of the amount to be repaid.

Section 14.4 Upon 30 calendar days notice to the GRANTEE, the DEPARTMENT may terminate, in whole or in part, the funding under this AGREEMENT at any time if (1) the DEPARTMENT fails to secure the necessary budgetary appropriation to fulfill its obligations under this AGREEMENT, (2) the GRANTEE becomes insolvent, (3) the GRANTEE fails to apply provided funds as intended under this AGREEMENT, or (4) statutory changes affecting the Program under which these funds were provided render funding this AGREEMENT impossible. DEPARTMENT shall notify the GRANTEE promptly in writing of such a determination and the effective date of the termination. The GRANTEE may request reconsideration by notifying the DEPARTMENT within 30 calendar days of the date of the DEPARTMENT'S notification. The DEPARTMENT shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the DEPARTMENT will be final.

Section 14.5 Should the Project be terminated by DEPARTMENT as a result of lack of funds or statutory changes, the DEPARTMENT will exercise best efforts to seek funds to be used to defray costs of shutting down the project and the GRANTEE need not repay any funds already paid to the GRANTEE if such funds represent eligible Project Costs that the GRANTEE has incurred. The

GRANTEE shall repay the DEPARTMENT for all funds paid associated with this AGREEMENT should the GRANTEE become insolvent or fails to apply funds as intended under this AGREEMENT.

Section 14.6 Delays caused by Force Majeure events during construction shall not be deemed a breach or default under this AGREEMENT. Upon the occasion of a Force Majeure event, as determined by the DEPARTMENT, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the DEPARTMENT may terminate this AGREEMENT at its discretion. Force Majeure events occurring during the performance period of this AGREEMENT will automatically result in day-for-day extension(s) to the performance period specified in this AGREEMENT.

Section 14.7 All reimbursements from the GRANTEE may also require the payment of interest, using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the DEPARTMENT to date of repayment by the GRANTEE. This section shall be binding on the GRANTEE'S successors and assigns.

ARTICLE 15. LIABILITY WAIVER

Section 15.1 The GRANTEE shall be responsible for all damage to life and property due to its activities and those of its subcontractors, agents or employees, in connection with the work performed under this AGREEMENT. In the event that the GRANTEE obtains insurance to cover this risk, the Commonwealth of Virginia, the DEPARTMENT, the Virginia Department of Transportation, and the officers or agents and employees of these entities shall be listed as additional insured's. Payment by the DEPARTMENT shall not waive any of the rights of the DEPARTMENT contained in this section nor release the GRANTEE from any responsibilities or duties contained in this AGREEMENT. Further, to the extent provided under Virginia law, it is expressly understood that the GRANTEE shall indemnify, defend and hold harmless the Commonwealth of Virginia, the DEPARTMENT, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits,

judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the GRANTEE or its subcontractors of the work covered by this AGREEMENT. The obligations of this section shall survive the termination or completion of this AGREEMENT.

ARTICLE 16. CONFLICT OF INTEREST

Section 16.1 - For any GRANTEE that is a local government or a local governmental agency covered by the Virginia Conflict of Interest Act for State and Local Governments, § 2.2-3100 et seq. of the Code of Virginia (1950), the provisions of that law shall apply.

Section 16.2 - For any GRANTEE that is not covered by the provisions of 16.1, the following shall apply:

1. Definitions. As used in this AGREEMENT and any Project Agreement the following meanings shall apply:

“Contract” or “agreement” means any agreement, including any contract or subcontract, whether written or not, to which the GRANTEE is a party or any agreement on behalf of the GRANTEE, including any subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this AGREEMENT or any Project Agreement written hereunder.

“Employee” means any person employed by the GRANTEE, whether full time or part time.

“Thing of pecuniary value” means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

2. Other than the salary and remuneration received from the GRANTEE as a normal attribute of employment with the GRANTEE, no employee of the GRANTEE shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, especially for any of the following reasons:

- a. in consideration of the use of the employee's position or status with the GRANTEE to obtain for any person or business any employment with or any contract with the GRANTEE or with any subcontractor or supplier of the GRANTEE, including any consulting or professional services contract.
- b. from any person or business other than the GRANTEE for performing any services for the GRANTEE in connection with any projects funded pursuant to or subject to this AGREEMENT or any Project Agreement written hereunder.
- c. from any person or business other than the GRANTEE for rendering any decision or directing any course of action in connection with any projects funded pursuant to or subject to this AGREEMENT or any Project Agreement written hereunder.

3. If any contract is obtained in violation of this Article or if the terms of this Article are violated, the DEPARTMENT may require the GRANTEE to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article.

ARTICLE 17. COVENANT AGAINST CONTINGENT FEES

Section 17.1 - The GRANTEE warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the GRANTEE, to solicit or secure the Project

Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the GRANTEE, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this AGREEMENT or Project Agreement without liability.

ARTICLE 18. NON-DISCRIMINATION

Section 18.1 In the solicitation or awarding of any contracts directly related to this AGREEMENT, the GRANTEE shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia State law relating to discrimination in employment.

Section 18.2 During the performance of this AGREEMENT, the GRANTEE agrees as follows: (a) the GRANTEE will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The GRANTEE agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the GRANTEE, in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE, will state that the GRANTEE, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Section 18.3 In all solicitations, either by competitive bidding or negotiation made by the GRANTEE for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the GRANTEE of the GRANTEE'S obligations

under this AGREEMENT and the regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

ARTICLE 19. DRUG-FREE WORKPLACE

Section 19.1 During the performance of this AGREEMENT, the GRANTEE agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the GRANTEE that the GRANTEE maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the AGREEMENT.

ARTICLE 20. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

Section 20.1 The GRANTEE is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to any Project Agreement issued pursuant to this AGREEMENT. A SWAM reporting goal of forty percent of total eligible grant expenditures is established by execution of this AGREEMENT by the parties. Eligible expenditures are defined as the total State funds available under any project agreement for discretionary procurement activities. The GRANTEE must report such

SWAM activity quarterly beginning at the end of the first three month period from date of the Project Agreement and ending upon the quarter that the last payment to the GRANTEE by the DEPARTMENT is made. The GRANTEE shall use Performance Reporting through the On-Line Grant Administration System (OLGA) to report efforts to achieve the SWAM goal.

ARTICLE 21. PERSONS WITH DISABILITIES

Section 21.1 The GRANTEE, its agents, employees, assigns or successors, and any persons, firms or agencies of whatever nature with whom it may contract or make an agreement shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the Code of Virginia 1950, as amended), the terms of which are incorporated herein by reference.

ARTICLE 22. NONRESTRICTIVE CLAUSE

Section 22.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 23. SPECIAL CAPITAL PROVISIONS

Section 23.1 The American with Disabilities Act (ADA) established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as “ADA paratransit eligible” by a public entity. GRANTEES that provide paratransit services must honor the certification of a visitor qualified by another public entity for a period of sixty days during a calendar year. The visiting rider shall not have to provide any additional documentation, participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the sixty days in a calendar year, he or she must go through the paratransit system’s qualification process.

Section 23.2 The purchase of all Project equipment and services and the construction of any facilities financed in whole or in part pursuant to this AGREEMENT shall be undertaken by the GRANTEE in accordance with the Department's standard procurement procedures, applicable Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The DEPARTMENT reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the GRANTEE.

Section 23.3 The GRANTEE agrees that the equipment and facilities funded under this AGREEMENT and related Project Agreements shall remain in service in the area and be used for the purpose for which they were purchased for the duration of their useful lives. If any project equipment or facilities are not used in this manner or are withdrawn from public transportation services, the GRANTEE shall immediately notify the DEPARTMENT. The DEPARTMENT shall have the option of requiring the GRANTEE either to relinquish title to the project equipment to the DEPARTMENT or to remit to the DEPARTMENT an amount equal to a proportional share of the fair market value of the equipment based upon the ratio of participation by the DEPARTMENT. In the case of project facilities, the GRANTEE shall remit to the DEPARTMENT the proportional share of the fair market value of the facilities purchased under this AGREEMENT and Project Agreement, based upon the ratio of participation by the DEPARTMENT pursuant to this AGREEMENT and Project Agreement. The GRANTEE shall keep records of the use of the Project equipment and facilities for review by the DEPARTMENT upon request.

Section 23.4 The GRANTEE shall permit the DEPARTMENT or its authorized representatives to inspect at any time all vehicles, facilities and equipment purchased or constructed by the GRANTEE as part of the project; all transportation services rendered by the GRANTEE using such vehicles, facilities and equipment; and all relevant project data and records.

Section 23.5 The GRANTEE shall maintain, in amount and form satisfactory to the DEPARTMENT, and in accordance with the laws of the Commonwealth of Virginia, such insurance or self-insurance as will be adequate to protect Project facilities or equipment and persons using such facilities or equipment throughout the period of required use. The DEPARTMENT will be named as a loss payee in the insurance policy on any vehicles or facilities purchased with funds provided under this AGREEMENT and each Project Agreement.

Section 23.6 In contracting for construction or facility improvements, the GRANTEE shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts exceeding \$25,000. For those contracts exceeding \$25,000, the minimum requirements shall be as follows:

- A bid bond from each bidder from a surety company selected by this bidder which is legally authorized to do business in Virginia. The amount of the bid bond shall be five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract in strict conformity of the plans, specifications, and conditions of this contract.
- A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

- In lieu of a bid payment or performance bond, a bidder may furnish a certified check in the face amount required for the bond.
- GRANTEE may seek DEPARTMENT approval of its bonding policy and requirements if they do not comply with these criteria.

Section 23.7 Any motor vehicles purchased under this grant will comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the Code of Virginia (Title 46.2).

Section 23.8 A debt service payment including interest on local or agency bonds that complies with the requirements of Article 4 “Allowable Costs” of this AGREEMENT is an allowable capital cost under this AGREEMENT and any subordinate Project Agreement.

Section 23.9 When any motor vehicle is purchased with funds supplied by DRPT pursuant to this AGREEMENT or any Project Agreement hereunder, DRPT reserves the right, at its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of the funds supplied by DRPT, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to DRPT.

Section 23.10 Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans are

- A. Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
- B. Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
- C. Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.
- D. Medium-size, light-duty transit buses (approximately 25-35'): 5 years or 150,000 miles.
- E. Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

Section 23.11 Value Engineering (VE) is the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers

identifies, analyzes and establishes a value for a function of an item or system. The objective of VE is to satisfy the required function at the lowest total costs (capital, operating and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety and aesthetics.

- A. It is the DEPARTMENT'S policy to require VE on major capital projects, and encourage the application of VE techniques to all construction projects. A major capital project is usually identified during the grant review process.
- B. A major capital project is any capital project with a total cost in excess of \$10 million. The DEPARTMENT can also require that VE be performed on individual projects under that threshold. Grantees are further encouraged to conduct VE on all construction projects including bus maintenance and storage facilities whose costs are estimated to exceed \$2 million, as well as on those projects regarding revenue railcar acquisition and rehabilitation.
- C. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering (PE) or at 30 percent of design. Some large or complex projects may need to conduct more than one VE study over their duration.
- D. Grantees with major capital projects are required to submit a VE report to the DEPARTMENT indicating the results of their VE efforts.
- E. Peer review is a process used by the grantee in the planning, design and implementation of capital projects. The concept of peer review can be applied to any problem or situation where a second opinion can be useful to decision makers. The

DEPARTMENT encourages the grantee to confer with other transit operations and maintenance experts in order to benefit from their experiences. The purpose of peer review is to improve the performance of the process or product being reviewed.

Although the grantee is encouraged to conduct peer review with all capital projects, in some instances it may be required by the DEPARTMENT.

- F. Grantees are encouraged to perform crime prevention reviews during the design phase of all DEPARTMENT funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the grantee and be available for DEPARTMENT review upon request.

ARTICLE 24. MISCELLANEOUS PROVISIONS

Section 24.1 No member, officer, or employee of the DEPARTMENT, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this AGREEMENT or related Project Agreement.

Section 24.2 This AGREEMENT shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 24.3 If any term or provision of this AGREEMENT is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this

AGREEMENT, and the remaining parts of this AGREEMENT shall be binding upon the parties to this AGREEMENT.

Section 24.4 This AGREEMENT, when properly executed, shall be binding upon the parties hereto and their respective successors and assigns.

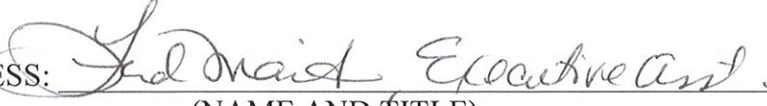
ARTICLE 25. INCORPORATION OF PROVISIONS

Section 25.1 All covenants and provisions of this AGREEMENT shall be made expressly a part of any subcontracts executed by the GRANTEE, and shall be binding on the subcontractors, their agents, and employees.


IN WITNESS WHEREOF, the DEPARTMENT and the GRANTEE have executed this AGREEMENT effective July 1, 2008.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION**

BY:  7/16/08
DIRECTOR OR DESIGNATED REPRESENTATIVE DATE

WITNESS:  7/16/08
(NAME AND TITLE) DATE

PUBLIC BODY

BY:  7/23/08
CHIEF EXECUTIVE OFFICER DATE

WITNESS:  7/23/08
(NAME AND TITLE) DATE