**MAINE DEPARTMENT OF TRANSPORTATION**

**Industrial Rail Access Program Agreement**

With

Regarding

***Locally Administered Project – IRAP (State Funds)***

MaineDOT WIN:       Vendor ID:

Total Amount: $      Agreement Begin Date:

State Share: $      Agreement End Date:

Grantee Share: $

This Agreement is entered into by and between the Maine Department of Transportation (**MaineDOT**), an agency of state government with its headquarters at 24 Child Street in Augusta, Maine, and a mailing address of 16 SHS, Augusta, ME 04333-0016; and       (the **Grantee**), a corporation or other legal entity with its principal place of business at       and a mailing address of      . (MaineDOT and the Grantee are referred to collectively herein as the Parties and individually as a Party.)

**RECITALS**

1. MaineDOT awarded the Grantee funding from the Industrial Rail Access Program for       (the **Project**), with construction funding set to be appropriated in      ; and
2. The Grantee shall administer the Project, subject to MaineDOT oversight to ensure that the Grantee fulfills all requirements of the State of Maine (the **State**); and
3. MaineDOT and the Grantee acknowledge that the State shall not acquire or gain any interest of ownership in the Grantee’s property, whether personal, real or otherwise.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing, MaineDOT and the Grantee agree as follows:

1. **APPENDIX**

[x]  Appendix A: IRAP application from the Grantee.

1. **PROJECT MANAGEMENT**
	1. The Grantee has assigned the officer or employee listed below to oversee the Project and carry out the Grantee’s responsibilities under this Agreement for the duration of the Project.
* Project Coordinator:

 Email:

 Phone:

* 1. MaineDOT has assigned the Project Manager listed below to carry out the State’s responsibilities under this Agreement. This Project Manager will have the authority to request design changes to meet applicable laws and design standards; accept and reject invoices; inspect construction activities; and take all other action to ensure the proper performance of this Agreement.
* Project Manager:      , Multimodal Program

 Email:

 Phone:

1. **FINANCIAL OBLIGATIONS**
	1. AUTHORIZATION. MaineDOT will not give the Grantee the required notice to proceed with construction work to begin on the Project until the following four steps have been completed:
2. The Parties execute this Agreement; and
3. The Grantee submits to MaineDOT a schedule of work and the environmental, railroad and right-of-way certifications required in Section 4 of this Agreement; and
4. The Grantee procures construction services by one of the methods in Section 4.7 below; and
5. MaineDOT issues the Grantee a Notice to Proceed with construction.
	1. COST-SHARING. The estimated cost of the Project is $     , which MaineDOT and the Grantee shall share as set out below. If the actual cost of the Project is less than this estimated amount, the final amount owed to the Grantee shall be based on the share percentages set out below.
	2. STATE SHARE. MaineDOT, using state funding set to be appropriated in      , will share in the cost of the Project up to a maximum of       percent or **$**, whichever is less.
	3. GRANTEE SHARE. The Grantee shall share in the cost of the Project at the approximate rate of       percent, for an estimated contribution of **$**. Additionally, the Grantee shall be fully responsible for the following:
		* 1. All costs exceeding the maximum amount of this Agreement, unless MaineDOT approves otherwise in writing;
			2. All costs determined by MaineDOT to be ineligible for reimbursement; and
			3. All costs incurred before the execution date of this Agreement.
	4. REIMBURSEMENT. Upon completion of the Project, the Grantee shall provide to MaineDOT a single, final invoice modeled after MaineDOT *Letter 20*, requesting reimbursement of the State’s share of actual, direct costs incurred as set out under section 3.2(a) above. Payment of the invoice shall be contingent upon a passing inspection of the Project by MaineDOT or its designee.
6. **PROJECT DEVELOPMENT**
	1. KICKOFF. Upon execution of this Agreement, the Grantee shall hold a kickoff meeting with MaineDOT to go over the Project.
	2. PROGRESS UPDATES. The Grantee shall provide MaineDOT with progress updates upon request. If the Grantee fails to respond to repeated requests for such updates, MaineDOT may declare the Grantee to be in default of this Agreement.
	3. PROJECT DESIGN. The Grantee shall provide MaineDOT with design plans, specifications and an updated cost estimate (PS&E) for review – if so requested. MaineDOT will enforce all laws, regulations and standards that apply to the Project and will require changes if they are not met.
	4. ENVIRONMENTAL CERTIFICATION. The Grantee shall provide MaineDOT with a signed certification modeled after MaineDOT *Letter 12*, stating either that all environmental permits were obtained or that no permits were required.
	5. RAILROAD CERTIFICATION. The Grantee shall provide MaineDOT with a signed certification modeled after MaineDOT *Letter 13* stating that it coordinated the Project with the railroad serving the Grantee’s facility and, if applicable, any utility affected by the Project.
	6. RIGHT-OF-WAY CERTIFICATION. The Grantee shall provide MaineDOT with a signed certification modeled after MaineDOT *Letter 14* starting that it either owns the property needed for the Project or has obtained easements, licenses or leases from the owners of the property. Such right, title and interest shall remain with the Grantee for the 10-year term of Useful Life. The Grantee shall notify MaineDOT if ownership of the property is transferred during this term.
	7. CONTRACTING. The Grantee, with written authorization from MaineDOT’s Project Manager, shall procure construction services for the Project by one of the following methods:
	8. Contracting with the Grantee’s own forces or with the railroad serving the Grantee’s facility;
	9. Contracting with the lowest responsive/responsible bidder, using a competitive process;
	10. Using a task order to contract with a qualified contractor with whom the Grantee has an established, ongoing contract for services.
	11. CONSTRUCTION OVERSIGHT. The Grantee shall provide oversight sufficient to ensure that the work meets MaineDOT’s Trackwork Inspection Criteria and the intent of the IRAP award. The Grantee shall provide MaineDOT personnel with access to the Project site, with appropriate notice.
	12. CHANGES. The Grantee shall submit proposed changes to the scope of work for review and concurrence. Upon such concurrence, the Parties shall modify this Agreement. MaineDOT reserves the right not to participate financially in any such change made without prior review.
	13. FINAL INSPECTION. MaineDOT may inspect the completed Project to ensure that it meets the MaineDOT Trackwork Inspection Criteria and the intent of the IRAP award. MaineDOT reserves the right not to reimburse the Grantee for work not meeting these criteria.
7. **OPERATION AND MAINTENANCE**
	1. USEFUL LIFE. The Grantee shall use the Project for moving freight for at least 10 years after completion. If the Grantee ceases to do so – *and such action was not caused by a discontinuation of rail service* – MaineDOT may recover from the Grantee the fair market value of all materials incorporated into the Project, up to the amount reimbursed to the Grantee under this Agreement.
	2. MAINTENANCE. For the 10-year Useful Life of the Project, the Grantee shall assure that the Project undertaken with IRAP funding is maintained to preserve its intended use and function pursuant to the Track Safety Standards of the Federal Railroad Administration.

***This Section 5 shall survive the expiration of this Agreement***.

1. **PROJECT RECORDS**
	1. Project Records, whether printed or electronic, shall consist of all plans, specifications, contracts, reports, notes, or other documents prepared by or for the Grantee. The Grantee shall retain all Project Records for at least **3 years** from the date of MaineDOT’s acceptance of the final invoice for the Project or the termination of this Agreement. If any litigation, claim, negotiation or audit has begun before the end of this period, all Project Records shall be kept for at least 3 years after the litigation, claim, negotiation or audit is resolved..
	2. The Grantee shall treat all Project Records – *except for proprietary information* – as public records. “Proprietary information” shall apply to trade secrets or information that is commercial or financial in nature, the disclosure of which would impair the competitive position of the Grantee and make available information otherwise not in the public domain.
	3. The Grantee and any contracted party working on its behalf shall allow, upon request, authorized representatives from the State of Maine to inspect and audit Project Records. Copies shall be furnished at no cost to the agencies requesting them.

***This Section 6 shall survive the termination or expiration of this Agreement.***

1. **DEBARMENT**
	1. By signing this Agreement, the Grantee certifies that neither it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. If the Grantee is unable to certify to this statement, it shall attach an explanation to this Agreement. For the term of this Agreement, the Grantee shall notify MaineDOT promptly if it or its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any federal department or agency.
	2. By signing this Agreement, the Grantee certifies that, for the term of this Agreement, it shall not permit any consultant, contractor, subcontractor or any other third party to work on any aspect of the Project if that entity or its principals has been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency. If the Grantee cannot certify to this statement, it shall attach an explanation to this Agreement.
2. **CONFLICT OF INTEREST**
	1. No officer or employee of the Grantee with a direct or indirect financial or other personal interest in any contract or subcontract for the Project shall negotiate, make, accept or approve any such contract or subcontract.
	2. No professional performing services for the Grantee on the Project shall have a direct or indirect financial or other personal interest in any contract or subcontract for the Project, other than the person’s employment or retention by the Grantee. If applicable, no officer or employee of any professional performing services for the Grantee on the Project shall have a financial or other personal interest in any real property acquired for the Project unless such interest is openly disclosed in the public record and such officer or employee has not participated in such acquisition for and on behalf of the Grantee.
	3. No person or entity entering into a contract for services for the Project shall have a financial or other interest in the Project or in its outcome, other than the performance of the contract. This prohibition applies to the following:
3. Any agreement with, or other interest involving, third parties having an interest in the outcome of the Project that is the subject to the contract;
4. Any agreement providing incentives or guarantees of future work on the Project or related matters; and
5. Any interest in real property acquired for the Project unless such real property interest is disclosed to the Grantee before the person or entity enters into the contract.

**9. GENERAL PROVISIONS**

* 1. LEGAL COMPLIANCE. This Agreement shall be construed under the laws of the State of Maine. During the performance of this Agreement, the Parties agree to comply with and abide by all applicable federal, state and local laws, statutes, rules, regulations, standards and guidelines; avoid hindering each other’s performance; fulfill all obligations diligently; and cooperate in achieving the intent of this Agreement.
	2. INDEMNIFICATION. To the extent permitted by law, the Grantee shall indemnify and hold harmless the State of Maine, its agents, employees and contractors from all claims, suits or liabilities arising from any negligent or wrongful act, error or omission by the Grantee, its agents, employees or contractors. Nothing herein shall waive any defense, immunity or limitation of liability that may be available to either Party under the Maine Tort Claims Act (14 M.R.S. Section 8101 et seq.) or any other privileges or immunities provided by law. ***This indemnification provision shall survive the termination or expiration of this Agreement.***
	3. INSURANCE. The Grantee shall carry insurance, at its own expense, adequate to fund its indemnity, liability and other obligations arising from or related to this Agreement. Additionally, the Grantee shall require contractors hired for work pursuant to this Agreement to carry a commercial general liability insurance policy providing coverage of at least one million dollars per occurrence listing the Grantee and the MaineDOT as additional insureds.
	4. STATE OF MAINE’S RIGHTS OF SET-OFF. MaineDOT shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State of Maine’s option to withhold for the purposes of set-off monies due to the Grantee under a specific project contract up to any amounts due and owed to MaineDOT regarding this Agreement or any other agreement/contract with any State of Maine department or agency, including any agreement/contract for a term commencing prior to the term of this Agreement, plus any amounts due and owed to the State of Maine for any reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. MaineDOT shall exercise its set-off rights in accordance with standard state practices including, in cases of set-off pursuant to an audit, the finalization of such audit by MaineDOT, its representatives, or the State Controller.
	5. NON-APPROPRIATION. Notwithstanding anything herein to the contrary, the Grantee acknowledges and agrees that although the execution of this Agreement manifests MaineDOT’s intent to honor its terms and to seek funding to fulfill MaineDOT’s obligations arising hereunder, such obligations by law are subject to available budgetary appropriations by the State of Maine. This Agreement creates no obligation on behalf of MaineDOT in excess of such appropriations.
	6. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the Grantee agrees as follows:
1. The Grantee shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to an actual occupational qualification. The Grantee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. The Grantee agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this section.
2. The Grantee shall state – in all solicitations or advertising for employees placed by or on behalf of the Grantee relating to this Agreement – that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.
3. The Grantee shall cause the foregoing provisions to be inserted in any contract for any work covered by this Agreement so that such provisions shall be binding upon each contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
	1. FLOW DOWN. Contracts between the Grantee and all third parties shall contain or incorporate by reference applicable provisions of this Agreement.
	2. ASSIGNMENT. No assignment of this Agreement is contemplated, and no assignment shall be made without MaineDOT’s express written permission.
	3. AMENDMENT AND MODIFICATION. This Agreement may only be amended in writing and signed by a duly authorized representative of each Party.
	4. BINDING EFFECT. The Parties shall be bound by the terms of this Agreement, which shall apply to its executors, their successors, administrators and legal representatives.
	5. INDEPENDENT CAPACITY. The Grantee, its employees, agents, representatives, consultants and contractors shall not act as officers, employees or agents of MaineDOT.
	6. ENTIRE AGREEMENT. This document represents the entire Agreement between the Parties. Neither Party shall be bound by any statement, correspondence, agreement or representation not expressly contained in this Agreement.
	7. ELECTRONIC SIGNATURES. Each Party agrees that this Agreement may be signed electronically and that all electronic signatures on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability and admissibility.
	8. NOTICE. Any communications, requests or notices to be given under this Agreement shall be made in writing and may be sent via email, which shall satisfy the delivery requirements of this section through express acknowledgement of receipt by the receiving Party. Alternatively, communications can be sent by U.S. Mail – certified or registered, return receipt requested – or by a recognized commercial carrier that requires a return receipt to be delivered to the sending party. Such communications, requests or notices shall be sent to the Grantee ’s Project Coordinator and MaineDOT’s Project Manager.
4. **DEFAULT AND TERMINATION**
	1. MaineDOT shall have just cause to terminate this Agreement upon or after the occurrence of one or more of the following events, which shall constitute default of this Agreement by the Grantee:
5. The Grantee fails to complete the Project by the Expiration Date of this Agreement without receiving an extension in writing from MaineDOT;
6. The Grantee withdraws from the Project, resulting in cancellation of the Project;
7. The Grantee makes no effort to respond to repeated requests for progress updates;
8. The Grantee takes any action that renders the Project ineligible for state funding;
9. The Grantee misrepresents or falsifies any claim for reimbursement;
10. The Grantee uses Project funds for a purpose not authorized by this Agreement; and
11. The Grantee fails to meet the standards of performance set out in this Agreement.
	1. In the event of a default, MaineDOT will afford the Grantee a cure period of 14 calendar days, effective on the Grantee’s receipt of Notice of Default. If the Grantee fails to address all grounds for default within this cure period or any longer period as MaineDOT may authorize, MaineDOT may terminate this Agreement for cause, with the following conditions:
12. MaineDOT will recover from the Grantee all reimbursements made to the Grantee; and
13. The Grantee shall forfeit all state funds remaining in the terminated Project.
14. **TERM AND EXPIRATION**
	1. This Grantee shall complete the Project and submit a final invoice to MaineDOT by , which shall be the Expiration Date of this Agreement. Any request for an extension shall be submitted in writing to the MaineDOT Project Manager before this Expiration Date.
	2. All provisions of this Agreement ***–*** *except for those provisions that by their very nature are intended to survive* ***–*** shall expire upon payment by MaineDOT of the final invoice from the Grantee or upon the Expiration Date above, whichever occurs first.
15. **AGREEMENT APPROVAL**

By signing this Agreement, the Grantee represents that it is authorized to enter into this Agreement and that it commits to appropriate the funds needed to satisfy its obligations identified herein.

IN WITNESS WHEREOF, the Parties, through their duly authorized representatives, have executed this Agreement effective on the date last signed below.

**Maine Department of Transportation**

By: By:

 **\* Todd Pelletier, P.E., Director \***

 Bureau of Project Development

Date: Date:

***\* Pursuant to 10 M.R.S.A. §9502, et seq., I certify that the foregoing electronic signature: (a) is intended to have the same force as my manual signature, (b) is unique to me, (c) is capable of verification, (d) is under my control, and (e) is linked to data in such a manner that it is invalidated if the data are changed.***

**APPENDIX A:**

**Industrial Rail Access Program Application**