

**SEDA-COG JOINT RAIL AUTHORITY
DEED OF EASEMENT**

THIS AGREEMENT, made this ____day of _____, 200_, between the **SEDA-COG JOINT RAIL AUTHORITY**, hereinafter referred to as "Grantor" and _____, hereinafter referred to as "Grantee."

WHEREAS, Grantor agrees to permit the Grantee's use and occupation of Grantor's property for:

NOW, THEREFORE, WITNESSETH that Grantor, for and in consideration of Dollars (\$ _____), and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of Grantee keeping and performing the covenants and conditions hereinafter stated on the part of Grantee to be kept and performed, does hereby grant and assign unto Grantee, its successors and assigns, to the extent the title of Grantor so permits, an easement only for the space and dimensions required for use and occupation as now existing under the documents as set forth in Appendix A attached hereto and made a part hereof, to maintain, repair, alter, renew, replace, relocate, use, and remove those certain pipe and wire crossings and occupations over, across, along, or under the lands of Grantor as set forth in Appendix A, such crossings and longitudinal occupations, together with any appurtenances thereto, hereinafter referred to singularly as the "Facility" and collectively as the "Facilities."

1A. The work and renewal, relocation, replacement, or removal of the Facilities shall be done under the general considerations satisfactory to and approved by the Grantor and shall not interfere with the proper and safe use and operation of the property of Grantor; provided, however, that if any governmental entity having jurisdiction over the Facilities has determined the manner and means of maintenance, repair, alteration, renewal, relocation, replacement, or removal thereof, then such determination shall prevail, provided such determination is more restrictive, and Grantee agrees to comply therewith at all times at its sole cost and expense.

1B. Grantee, at its own cost and expense, when performing any work in connection with the Facilities, shall furnish watchmen to keep persons, equipment, and materials a safe distance from the tracks of Grantor.

1C. In addition to, but not in limitation of any of the foregoing provisions, if at any time Grantor should deem flagmen, watchmen, or inspectors are desirable or necessary to protect its operations or property, or its employees, patrons, or licensees, during the course of maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities, Grantor shall have the right to place such flagmen, watchmen, or inspectors and Grantee agrees to bear reasonable cost (as specified in paragraph 7 of this Deed of

Easement), risk, and expense thereof and promptly to reimburse Grantor upon demand. The furnishing or failure to furnish flagmen, watchmen, or inspectors by Grantor, however, shall not release Grantee from any liabilities assumed by Grantee hereunder.

2. If Grantee desires, or is required as herein provided, to revise, replace, relocate, add to, alter, or change the location, nature, or use of any of the Facilities, which does not require any additional area of occupation, it shall submit detailed plans satisfactory to, and obtain the written approval of, the Grantor before any work commenced, which approval shall not be unreasonably withheld, and the terms and conditions of this Deed of Easement shall apply hereto. In the event of new construction, expansion, or changes in the existing Facilities which shall require additional easement areas, (including without limitation any changes in the nature of the product carried by, through, in, or upon the Facilities), Grantee shall enter into a new Deed of Easement with Grantor for a consideration then being charged by Grantor.

3A. Grantee shall maintain, repair, and renew the Facilities and shall, upon notice in writing from the Grantor requiring it so to do, promptly make such repairs and renewals thereof as may be required by Grantor, unless, however, Grantee can demonstrate to Grantor that the Facilities are in satisfactory condition within ninety (90) days after receipt of such notice. In the event such repairs are necessary and the Grantee does not initiate steps to make such repairs Grantor may, for the purposes of protecting and safeguarding its property, traffic, patrons, or employees from damage or injury, upon notice to Grantee, enter upon the premises at any time to make such repairs and renewals and furnish such material as it may deem adequate and necessary, all at the sole cost and expense of Grantee.

3B. In the event of any emergency, Grantee shall take immediate steps within reason to perform any necessary repairs, and in the event Grantee fails to do so, Grantor shall have the right, but not the obligation, to perform such repairs at the sole cost and expense of Grantee.

4A. Grantor shall have the right to inspect the Facilities at any time, and in the event repairs and renewals to Facilities referred to in paragraph 3A. herein are required, Grantor shall have the right to approve the materials used in the maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities.

4B. The right of inspection of the Facilities by Grantor shall extend for an appropriate distance on each side of the property of Grantor, it being understood by Grantee that the method of construction and the materials used in the construction, maintenance, repair, alteration, renewal, replacement, or relocation of the Facilities may have a significant impact upon the strength and stability of the Facilities over, under, upon, or in the property of the Grantor.

5. Grantee shall comply with all statutes, regulations, orders, directives, ordinances, and similar promulgations of law applicable to the Facilities and shall assume all cost, expense, and responsibility in connection therewith, without any liability therefore on the part of the Grantor, and Grantee hereby agrees to indemnify, defend, and hold Grantor harmless from and against all costs, fines, penalties, and expenses arising from the failure of Grantee to so comply.

6A. Grantee understands that the railroad operations at or near the Facilities involve some risk, and Grantee, as part of the consideration for this

Deed of Easement, and with full knowledge and appreciation of such risk, hereby releases and waives any right to ask for or demand direct or consequential damages for or on account of any loss or injury to the Facilities and contents thereof that are over, under, upon, or in the property of Grantor, including loss of, or interference with, service or use thereof, unless such loss or injury is proved by Grantee to be due to the negligence of Grantor.

6B. Grantee also covenants and agrees to indemnify, defend, and safe harmless Grantor from and against all cost and expense arising from, or in connection with, any and all losses, damages, detriments, suits, claims, demands, costs, and charges which Grantor may directly or indirectly suffer, sustain, or be subjected to by reason of the construction, placement, attachment, presence, use, maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities, in, on, about, under, over, or from the property of Grantor, whether such loss and damage be suffered or sustained by Grantor directly, or by its employees, patrons, or licensees, or other persons or entities, including Grantee, its employees, and agents, who may seek to hold Grantor liable therefore, except when proved by Grantee to be due to the negligence of Grantor.

6C. Grantee agrees to indemnify Grantor against any claims, actions, or legal proceedings under the Federal Employer's Liability Act and any amendments to such Act now or hereafter in effect, alleging or claiming, in legal effect, that Grantor in respect to that portion of its land which lies under or near the Facilities, failed to correct or guard against an unsafe condition or failed to furnish a safe place to work. Failure by Grantor to make verbal or written complaints to Grantee with respect to Grantee's failure to carry out its obligations under this Deed of Easement, or knowledge on the part of Grantor of such failure by Grantee, shall not be deemed to constitute acquiescence therein by Grantor or actionable negligence on the part of Grantor.

6D. If a claim or action is made or brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

7. Except as provided in paragraph 9 of this Deed of Easement, all direct cost and expense in connection with the maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities shall be borne by Grantee, and in the event of work being performed or material furnished by Grantor under the stipulated right to perform such work under any section hereof, Grantee agrees to pay to Grantor the actual cost of material plus the then current applicable overhead percentages as developed and published by the Accounting Department of Grantor. It is understood that such material and labor overhead charges shall be applied at the rates which are effective at the time of the performance of any such work by employees of Grantor. Grantee agrees to pay such bills within thirty (30) days of the presentation thereof by Grantor.

8. In the event Grantee determines that all or part of any occupation under this Deed of Easement referred to in Appendix A is no longer essential in connection with the use provided for thereunder, Grantee shall: (a) remove from the Grantor's property, in a manner satisfactory to the Grantor, such of the Facilities as have been abandoned and restore said property to a condition satisfactory to the Grantor; and (b) deliver to the Grantor a release of Deed of

Easement, in recordable form, with respect to such easement or portion thereof no longer required.

9A. Grantee shall, upon written request of Grantor, promptly relocate, strengthen, support, or otherwise protect or modify the Facilities, where located over, upon, or under the property of Grantor (any such requested action being referred to herein as a "Modification"), except that Grantor shall provide property for such relocation without additional compensation from Grantee. Where a Modification is reasonably required by Grantor in order to accommodate a relocation or improvement of Grantor's railroad operating Facilities, including, but not limited to, its signal or power transmission facilities, the Modification shall be performed by Grantee at Grantee's sole cost and expense. Where a Modification is required by Grantor in order to accommodate a third party, other than a user of rail services, the reasonable costs thereof shall be paid by Grantor. All construction in connection with any Modification shall comply with the terms and conditions in this Deed of Easement. In the event of a taking (or transfer in lieu thereof) by the exercise of the power of eminent domain, Grantor and Grantee shall each retain their rights pursuant to the Eminent Domain Code of Pennsylvania.

9B. With respect to a need to modify Facilities of Grantee reasonably required by Grantor in order to accommodate relocation or improvement of Grantor's railroad operating Facilities referred to in 9A. above, the cost of which is Grantee's responsibility, Grantor agrees that Grantee shall be given an opportunity to seek alternative methods, acceptable to Grantor, which would eliminate the necessity of relocating Facilities of Grantee, including but not limited to the acquisition of additional land at Grantee's sole cost and expense, which could accommodate the relocation or improvement of Grantor's railroad operating Facilities.

10. In the event the Facilities consist of an underground occupation, Grantee shall be responsible for any settlement caused to the land, tracks, facilities, and appurtenances of Grantor arising from or as a result of maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities for a period of twelve (12) months subsequent to the date of completion of such work, and Grantee, after receiving formal written notification and verification thereof, agrees to pay to Grantor on demand the full cost and expense of correcting such settlement.

11. As further part of the consideration for this Deed of Easement, Grantee covenants and agrees to indemnify, defend, and hold Grantor harmless from and against any liens, assessments, taxes, or charges of any kind made against Grantor or any of its property by reason of the construction, maintenance, or use of any of the Facilities, and Grantee covenants and agrees to pay to Grantor, promptly upon bills rendered therefore, the full amount of any such liens, assessments, taxes, or charges rendered against Grantor or any of its property, including penalties, interest, late fees, and the costs to remove or bond any lien, assessment, tax, or charge from official records.

12. If any part of this Deed of Easement is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part thereof, and the remaining parts of this Deed of Easement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

13. The easement herein granted is subject to the railroad uses and Facilities of Grantor located on the land herein above referred to. Grantor reserves the right to use such land, or any part thereof, for rail transportation and related purposes which do not interfere with, or impair, the right granted by this Deed of Easement. Grantor also reserves the right and easement to keep, maintain, repair, replace, alter, renew, and attach existing and future signal and communication lines of Grantor to the structures of Grantee referred to in Appendix A.

14. If the Grantee's right to exercise the easements herein granted shall be legally challenged by any third party on the grounds that the Grantor did not have sufficient interest in such easement areas to convey such easements, the Grantor consents and agrees in such event, and insofar as it may lawfully do so, to the acquisition by the Grantee of such easements in and over such easement areas by the power of eminent domain, but in the event of the exercise of such power by Grantee, such easements so acquired shall be subject to and exercised in accordance with the terms and provisions of this Deed of Easement.

If, however, such third party succeeds in its legal challenge and Grantee is unable to acquire such easements by eminent domain, then Grantor shall pay to Grantee, as liquidated damages, the amount of consideration paid under this Deed of Easement by Grantee, prorated, however, to the portion or portions of the interest so challenged.

15. The words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees," respectively, whenever the sense of this Deed of Easement so requires.

16. The terms and conditions of this Deed of Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

17. Grantee shall notify the Grantor, or his representative prior to any work of maintenance, repair, alteration, renewal, relocation, replacement, or removal of the Facilities.

18. Grantee hereby agrees to pay all costs and fees in conjunction with the filing or recording of this instrument and any plans in conjunction therewith in or with any public place or with any public agency or subdivision. All costs related to the preparation and circulation of this document and attachments, shall be borne by the Grantor.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this Deed of Easement to be fully executed the day and year first-above written.

Attest: SEDA-COG JOINT RAIL AUTHORITY

BY:-----

Attest:

NAME

BY:-----

ACKNOWLEDGMENT

Commonwealth of Pennsylvania :
: ss
County of :

On this ___ day of _____, 200_, personally appeared before me, the undersigned, a notary public, _____, who acknowledged that he is the _____ and that he executed the foregoing on behalf of the said SEDA-COG JOINT RAIL AUTHORITY for the purposes therein contained.

Notary Public

Commonwealth of Pennsylvania :
: ss
County of :

On this ___ day of _____, 200_, personally appeared before me, the undersigned, a notary public, _____, who acknowledged that he is the _____ and that he executed the foregoing on behalf of the said _____ for the purposes therein contained.

Notary Public