

RR PENG S
EFFECTIVE DATE _____
(Department will insert)

AGREEMENT NO. _____

COUNTY _____

FID NO. _____

MUNICIPALITY _____

SAP VENDOR NO. _____

NS FILE NO. _____

MPMS NO. _____

RAILROAD REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made by and between the Commonwealth of Pennsylvania, acting through the Secretary of Transportation, hereinafter called Department

and

_____, a _____
_____ with its principal offices located at _____,
_____, PA _____, hereinafter called Railroad, collectively referred to as Parties.

WITNESSETH:

WHEREAS, Department proposes to reconstruct _____ State Route _____, Section _____, in _____ County, hereinafter referred to as the Project;

WHEREAS, all construction work performed pursuant to this Agreement must comply with the Buy America provisions in 23 U.S.C. § 313 and 23 CFR Part 635.410 and the Steel Products Procurement Act, 73 P.S. § 1881 et seq.;

WHEREAS, Pennsylvania Public Utility Commission (PUC) has exclusive jurisdiction over all rail-highway crossings in the Commonwealth of which this project will be subject to a future order;

WHEREAS, the tracks of Railroad are located _____ the grade of the highway at approximately Railroad milepost (_____) having DOT No. (_____);

WHEREAS, Department has authorized Railroad to proceed with the preliminary engineering on _____, __, 20___. This authorization shall include transportation and labor for field engineering, protection, meetings, review of plans and specifications, preparation of plans and specifications if required, bridge inspection, and preparation of estimates and other related preparatory work in advance of physical construction operations;

WHEREAS, Department has agreed to initially reimburse Railroad for its actual costs of (preliminary engineering / accounting / etc.) for the Project; and,

WHEREAS, the Parties have agreed to more fully set forth in detail the work, material and labor for the preliminary engineering to be performed by Railroad, and the costs thereof, estimated to be \$_____.

N O W, T H E R E F O R E:

For and in consideration of the premises, the mutual covenants hereinafter contained and with the intent to be legally bound hereby, the Parties agree as follows:

1. Preliminary Engineering Work: Railroad agrees to perform preliminary engineering to (i) enable Department to complete design of the Project, and (ii) not unreasonably delay Department's design schedule.

2. Cooperation: Railroad and Department agree to or have their Consultants cooperate so as to coordinate their respective schedules in an effort to not delay the design of the improvement Project. Department agrees to provide Railroad a minimum thirty day review period from the date Railroad receives Department's submission.

3. Pennsylvania Prevailing Wage Act: Work performed under this agreement by any worker for any contractor or subcontractor for the Railroad may be subject to the Pennsylvania Prevailing Wage Act, Act of August 15, 1961, P.L. 987, as amended, 43 P.S. §§ 165-1 - 165-17; 34 Pa. Code §§ 9.101-9.112. Railroad shall be responsible for obtaining correct guidance on whether or not prevailing wages are applicable to the work performed under this agreement. If prevailing wages are applicable, Railroad shall insure that prevailing wages are included for all covered work in the specification bid proposal used to solicit bids to do the contracted work and the contracts for the project. If applicable, all contractors and subcontractors employing workers under this agreement shall comply with the provisions of the Pennsylvania Prevailing Wage Act and its regulations. This shall include the required contract provisions found in 34 Pa. Code § 9.103. Railroad can obtain prevailing wage rates and information about compliance through the following:

Bureau of Labor Law Compliance
1301 Labor & Industry Building
Seventh & Forster Streets
Harrisburg, PA 17120-0019
717-787-4671
www.dli.state.pa.us

(keywords “prevailing wage/apprenticeship”
then “prevailing wage determination request”)

Railroad shall be responsible to maintain the documentation, particularly certified payrolls, showing compliance with the Prevailing Wage Act.

4. Reimbursement of Costs: Department agrees, subject to provisions of paragraph nine (9) hereinafter set forth, to initially reimburse Railroad for its actual costs directly involved in the Project, which Railroad estimate at \$_____., further described on Exhibit “A”. It is understood and agreed that Railroad may bill the Department no more frequently than sixty (60) days or upon incurring Five Thousand (\$5,000.00) Dollars additional costs, whichever first occurs for any and all actual and approved costs within the scope of the Project. Upon receipt of such verification and confirmation, Department will promptly pay Railroad the entire amount of such periodic billings.

5. Automated Clearing House: Department will make payments to the recipient of the funding through the Automated Clearing House (“ACH”). Within 10 days of the contract execution date, the recipient of the funding must submit or must have already submitted its ACH and electronic addenda information, if desired, to the Department’s Payable Service Center, Vendor Data Management Unit at 717-214-0140 (FAX) or by mail to the Office of Comptroller Operations, Bureau of Payable Service Center, Payable Service Center, Vendor Data Management Unit, 555 Walnut Street – 9th Floor, Harrisburg, PA 17101. A copy of the ACH enrollment form can be obtained online at www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf.

6. Reimbursement and Record Keeping: Department’s reimbursement to Railroad for services performed under this Agreement shall be in accordance with the applicable provisions of the FHWA Federal-Aid Policy Guide (23 CFR) and any supplements and amendments thereto. Railroad agrees that Department and/or its designees shall have the right to access and inspect Railroad’s records relating to the Project at any time during reasonable business hours during the Project and for three (3) years after final payment has been received by Railroad.

7. Inspection and Approval of Work: That materials furnished and work performed under this Agreement will be subject at all times to the inspection and approval of Department, PUC and the FHWA and/or their duly authorized representatives.

8. PUC Proceedings: The Parties agree they will testify in any proceeding before the PUC in accordance with the terms of this Agreement and will submit this Agreement to the PUC with the request it be incorporated into any order issued by PUC.

9. Compliance with PUC Orders: Should there be any conflict between this Agreement and any order of the PUC, the Parties agree to be bound by the lawful orders of the PUC on matters within its jurisdiction or the final determination by any proper Court on an appeal from said order or orders. In the event the PUC’s order or final determination on appeal from said order as aforesaid directs Railroad to bear its own costs for the said preliminary engineering work

for which Department initially reimbursed the Railroad, Railroad agrees to promptly return such reimbursement to the Department. Further, if sums initially paid to Railroad exceed the actual cost for the Railroad's said preliminary engineering, Railroad agrees to promptly return all excess payments to Department.

10. Federal Funding This Project is subject to and contingent upon the approval for eligibility of Federal Funds by the FHWA and failure to obtain such approval shall relieve the Parties of their obligations under this Agreement.

11. Cancellation, Abandonment, or Revision of the Project: It is further agreed that if, for any reason, the highway construction project referred to herein shall be canceled, abandoned, or revised, in such a manner that the work described in this Agreement should be no longer required, in the opinion of the Secretary of Transportation, then in such event, the only amount which will be payable to the Railroad will be the actual and related indirect costs of the work actually completed at the time of notification by the Department of the said cancellation, abandonment or revision, plus any additional expenses incurred by the Railroad in restoring its system to normal operation conditions.

12. Amendments and Modifications: No alterations or variations to this Agreement shall be valid unless made in writing and signed by the Parties. Amendments to this Agreement shall be accomplished through a formal written document signed by the Parties with the same formality as the original Agreement.

13. Titles Not Controlling: Titles of paragraphs are for reference only, and shall not be used to construe the language in this Agreement.

14. Severability: The provisions of this Agreement shall be severable. If any phrase, clause, sentence or provision of this Agreement is declared to be contrary to the Constitution of Pennsylvania or of the United States or of the laws of the Commonwealth the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

15. No Waiver: Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by other Parties of any term or condition of this Agreement. In any event, the failure by either party to enforce its rights and remedies under this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition of this Agreement.

16. Independence of the Parties: It is understood by and between the Parties that nothing contained herein is intended or shall be construed to, in any respect, create or establish the relationship of partners between Railroad and the Department, or as constituting the Department as the representative or general agent of Railroad for any purpose whatsoever.

17. Assignment: This Agreement may not be assigned by Railroad, either in whole or in part, without the written consent of the Department.

18. Third Party Beneficiary Rights: The Parties to this Agreement understand that this Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.

19. Notices: All notices and reports arising out of, or from, the provisions of this Agreement shall be in writing and given to the Parties at the address provided under this Agreement, either by regular mail, facsimile, e-mail, or delivery in person.

20. Integration and Merger: This Agreement, when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the Parties containing all the terms and conditions agreed on by the Parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
District Executive Date

APPROVED AS TO LEGALITY
AND FORM

PRELIMINARILY APPROVED

by _____
for Chief Counsel Date

by _____
Senior Counsel in Charge Date

by _____
Deputy General Counsel Date

FUNDS COMMITMENT DOC. NO. _____

CERTIFIED FUNDS AVAILABLE UNDER

SAP NO. _____

SAP COST CENTER _____

GL. ACCOUNT _____

AMOUNT \$ _____

by _____
Deputy Attorney General Date

by _____
for Comptroller Operations Date

Preapproved form:
OGC Form No. 18-FA-71.0
Appv'd OAG 11/5/15