

RR PENG F
EFFECTIVE DATE _____
(Department will insert)

AGREEMENT NO. _____

COUNTY _____
MUNICIPALITY _____

FID NO. _____
SAP VENDOR 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, the Project is eligible for financing with Federal Highway funds, under
Federal Project Number - - - ;

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 § 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 estimates 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 Commonwealth’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 Audit Clause Compliance: Department's reimbursement to Railroad as aforesaid shall be in accordance with the provisions of Federal Highway Administration's (FHWA) Federal-Aid Policy Guide (23 CFR) and any supplements and amendments thereto. Department will reimburse Railroad without delay all the actual cost of the aforesaid work, upon receipt by Department of Railroad billing and confirmation thereof by Department which may include, but not be limited to time sheets, material invoices and equipment records of Railroad and/or others to substantiate the billing. Railroad agrees to make its invoices and records available for audit and agrees to be bound by the terms and conditions of the audit clause attached hereto as Exhibit “B”.

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 P.U.C., the Parties agree to be bound by the lawful orders of the P.U.C. 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 P.U.C.'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. Right-to-Know Law: The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101 - 3104, applies to this Agreement. Therefore, this Agreement is subject to, and the [Name of contracting party] shall comply with, the clause entitled Contract Provisions – Right to Know Law, attached as Exhibit “C” and made a part of this Agreement. As used in this exhibit, the term “Contractor” refers to the [Name of contracting party].

12. 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.

13. 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.

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

15. 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.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 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]

IN WITNESS WHEREOF, the Parties have caused these presents to be executed and attested by their proper officials, pursuant to due and legal action authorizing the same to be done, the day and year first above written.

ATTEST:

(Insert Railroad Name)

Signature Date

by _____
Signature Date

Title

Title



[COMMONWEALTH SIGNATURE PAGE FOLLOWS]

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 No. 18-FA-17.1
Appv'd OAG 3/5/14

AUDIT CLAUSE TO BE USED IN AGREEMENTS WITH SUBRECIPIENTS RECEIVING FEDERAL AWARDS FROM THE COMMONWEALTH

The [NAME OF SUBRECIPIENT] must comply with all applicable federal and state grant requirements including *The Single Audit Act Amendments of 1996; 2 CFR Part 200 as amended*; and any other applicable law or regulation, and any amendment to such other applicable law or regulation that may be enacted or promulgated by the federal government.

If the [NAME OF SUBRECIPIENT] is a local government or non-profit organization that expends \$750,000 or more in federal awards during its fiscal year, the [NAME OF SUBRECIPIENT] is required to provide the appropriate single or program specific audit in accordance with the provisions outlined in *2 CFR Part 200.501*.

If the [NAME OF SUBRECIPIENT] expends total federal awards of less than the threshold established by *2 CFR 200.501*, it is exempt from federal audit requirements for that year, but records must be available for review or audit by appropriate officials (or designees) of the federal agency, pass-through entity, and Government Accountability Office (GAO).

If the [NAME OF SUBRECIPIENT] is a for-profit entity, it is not subject to the auditing and reporting requirements of *2 CFR Part 200, Subpart F - Audit Requirements (Subpart F)*. However, the pass-through commonwealth agency is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The contract with the for-profit subrecipient should describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the contract and post-award audits. The post-award audits may be in the form of a financial audit in accordance with *Government Auditing Standards*, a single audit report or program-specific audit report in accordance with *Subpart F*. However, these post-award audits must be submitted directly to the affected commonwealth agency that provided the funding. Only single audit reports for local governmental and non-profit subrecipients are electronically submitted to the Federal Audit Clearinghouse.

ADDITIONAL POTENTIAL COMPONENTS OF THE SINGLE AUDIT REPORTING PACKAGE

In instances where a federal program-specific audit guide is available, the audit report package for a program-specific audit may be different and should be prepared in accordance with the appropriate audit guide, *Government Auditing Standards*, and *Subpart F*.

In addition to the requirements of *Subpart F*, commonwealth agencies may require that the single audit reporting packages include additional components in the SEFA, or supplemental schedules, as identified through the respective grant agreement.

Exhibit B

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SUBMISSION OF THE AUDIT REPORT

The [NAME OF SUBRECIPIENT] must submit an electronic copy of the audit report package to the Federal Audit Clearinghouse, which shall include the elements outlined in *Subpart F*.

SUBMISSION OF THE FEDERAL AUDIT CLEARINGHOUSE CONFIRMATION

The subrecipients must send a copy of the confirmation from the Federal Audit Clearinghouse to the resource account RA-BOASingleAudit@pa.gov.

AUDIT OVERSIGHT PROVISIONS.

The [NAME OF SUBRECIPIENT] is responsible for obtaining the necessary audit and securing the services of a certified public accountant or independent governmental auditor.

The commonwealth reserves the right for federal and state agencies or their authorized representatives to perform additional audits of a financial or performance nature, if deemed necessary by commonwealth or federal agencies. Any such additional audit work will rely on work already performed by the [NAME OF SUBRECIPIENT]'s auditor and the costs for any additional work performed by the federal or state agencies will be borne by those agencies at no additional expense to the [NAME OF SUBRECIPIENT].

Audit documentation and audit reports must be retained by the [NAME OF SUBRECIPIENT]'s auditor for a minimum of five years from the date of issuance of the audit report, unless the [NAME OF SUBRECIPIENT]'s auditor is notified in writing by the commonwealth, the cognizant federal agency for audit, or the oversight federal agency for audit to extend the retention period. Audit documentation will be made available upon request to authorized representatives of the commonwealth, the cognizant federal agency for audit, the oversight federal agency for audit, the federal funding agency, or the GAO.

Contract Provisions – Right to Know Law

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.

Revised September 3, 2013

EXHIBIT C

f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth.

g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the Parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

Revised September 3, 2013

EXHIBIT C

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