

RAILROAD CONSTRUCTION AGREEMENT

- 6) The DEPARTMENT shall pay monthly bills promptly upon receipt and verification thereof by the DEPARTMENT. Upon completion of the work the RAILROAD shall submit one final bill to the DEPARTMENT and the DEPARTMENT shall make a conditional final payment promptly upon verification of the final bill by the DEPARTMENT. The total liability of the DEPARTMENT shall not exceed the reimbursable cost of the work as ascertained by computing the items of cost as set forth in the aforesaid CFR. At any time within three years after the date of the conditional final payment the DEPARTMENT may audit the cost records and accounts of the RAILROAD pertaining to this project and will bill the RAILROAD any amount of any unallowable expenditure made in the conditional final payment of this contract or, if no unallowable expenditure is found, notify the RAILROAD of that fact in writing. If the RAILROAD does not pay any such bill within thirty days of receipt of the bill from the DEPARTMENT, the DEPARTMENT may set-off the amount of such bill against the amounts owed the RAILROAD on any then-current agreement between the RAILROAD and the DEPARTMENT. For audit purposes, the reports, plans, specifications, digital information, field data, notes and cost records and accounts of the RAILROAD pertaining to this project shall be made available to the representatives of the DEPARTMENT or the Federal Highway Administration at the General Office of the RAILROAD during the progress of the work and for a period of not less than three years from the date conditional final payment has been received by the RAILROAD.
- 7) The RAILROAD expressly agrees that the DEPARTMENT may set-off against the net payments provided for herein an amount equal to that amount which has been identified by either a State or Federal audit as an unallowable expenditure in any agreement between the RAILROAD and the DEPARTMENT on which a conditional final payment has been made.
- 8) The DEPARTMENT shall not be bound to pay any amount in excess of the reimbursable portion of the detailed cost estimate attached hereto, nor for any items of work not provided for in the detailed cost estimate. In the event it is determined that a change in the work to be performed by the RAILROAD will be required or that an increase in cost anticipated will be incurred by the RAILROAD, a written change or extra work order approved by the DEPARTMENT shall be required.
- 9) The DEPARTMENT shall not be liable for payment of any bill received more than twelve (12) months after all work under this Agreement is completed unless the RAILROAD and DEPARTMENT have agreed in advance to an extension of the billing period in writing. Unless an extension of the billing period has been agreed to the DEPARTMENT may consider payment made up to one year following completion of the work to be final.
- 10) The RAILROAD shall provide construction engineering including inspection services as identified and included in the attached estimate. The anticipated scope of services to be provided in connection with construction engineering by consulting engineering firms for the RAILROAD is attached hereto and made a part hereof. Prior to contracting for any consultant work not specifically covered by this agreement, the RAILROAD will submit to the DEPARTMENT for approval the consultant's proposal containing, but not limited to, a statement of the scope of consultant services, a list of wage rates and classifications to be