

EFFECTIVE DATE \_\_\_\_\_  
(Department will insert)

AGREEMENT NO. \_\_\_\_\_

COUNTY York

FID NO. 23001908

MUNICIPALITY York

SAP VENDOR NO. 138884

YCR FILE NO. \_\_\_\_\_

MPMS NO. 105013

### RAILROAD REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made by and between the City of York, acting through the City of York City Council, hereinafter called York City

and

York Railway Company, a subsidiary of Genesee & Wyoming, Incorporated with its principal offices located at 20 West Avenue, Darien, CT 06820, hereinafter called Railroad, collectively referred to as Parties.

### WITNESSETH:

WHEREAS, as part of its maintenance responsibility York City proposes to create a new public, at-grade crossing by the construction of a new city road and pedestrian/bicycle trail, where the proposed York County Rail Trail crosses, at grade, the single track of York Railway Company, located in the City of York, in York County, in accordance with the York City approved construction plans identified as Heritage Trail Northern Extension Phase 4, hereinafter referred to as the "Project"; and,

WHEREAS, the Project is eligible for financing with Federal Highway funds, under Federal Project Number 236001908; and,

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; and,

WHEREAS, the Parties agree that 23 CFR Parts 140 and 646 are incorporated herein by reference as well as in York City's contract for the Project; and,

WHEREAS, the tracks of Railroad are located at the grade of the project at approximately Railroad milepost (.0013.91) having DOT No. (N/A); and,

WHEREAS, Pennsylvania Public Utility Commission (PUC) has exclusive jurisdiction

over all rail-highway crossings in the Commonwealth of which this Project is subject to any existing and future Orders which may set forth cost allocations, work to be performed, and maintenance responsibilities; and,

WHEREAS, York City has agreed to initially reimburse Railroad for 100% of its actual costs of construction for the Project (said services hereinafter referred to as "Construction Work"); and,

WHEREAS, Railroad agrees as part of the Construction Work to furnish and maintain any flagmen and/or engineering services that may be deemed necessary to protect and safeguard its railroad facilities and the operations of the railroad during the time York City's contractor is actively working on or adjacent to the railroad property; and,

WHEREAS, Railroad and/or its contractors will furnish all of the materials and do all of the work necessary to install an at-grade crossing for both bicycle/pedestrian and vehicular traffic, including all automatic warning lights and gates, electrical connectivity, rail bedding materials, rail ties, track, crossing surface material and track seals as part of the Construction Work to adjust its facilities which may be required as incidental to the construction of the Project; and,

WHEREAS, York City inspection of recovered materials will not be required as Railroad and/or its contractors will furnish all material and do all work necessary to adjust its existing facilities as part of the Project; and,

WHEREAS, York City and Railroad desire to more fully set forth in detail the work, material and labor with respect to the Construction Work to be performed by Railroad, and the costs thereof, estimated to be \$365,000.00, further described and itemized on Exhibit "A" entitled Railroad Force Account Estimate.

WHEREAS, York City's contractor for the project will be required to obtain and carry the necessary Railroad insurance in accordance with Railroad's specified amounts as further described and attached hereto and made a part of Exhibit "B"; and,

### **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. Construction Work: Railroad agrees to perform Construction Work to (i) enable York City to complete the Project, and (ii) not unreasonably delay York City's construction schedule.
2. Cooperation: Railroad and York City agree to or have their contractors cooperate so as to coordinate their respective schedules in an effort to not delay

the completion of the Project.

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](http://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: York City 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 \$~~365,000.00~~, further described on Exhibit A. It is understood and agreed that Railroad may bill the York City 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 said Project. Upon receipt of such verification and confirmation, York City will promptly pay Railroad the entire amount of such periodic billings.

5. Automated Clearing House: York City 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 – 9<sup>th</sup> 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](http://www.vendorregistration.state.pa.us/cvmu/paper/Forms/ACH-EFTenrollmentform.pdf)

6. Reimbursement and Record Keeping: York City'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 York City 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 York City, 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 construction and/or protective service work for which York City initially reimbursed the Railroad, Railroad agrees to promptly return such reimbursement to the York City. Further, if sums initially paid to Railroad exceed the actual cost for the Railroad's said construction and/or protective service, Railroad agrees to promptly return all excess payments to York City.

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 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 City Council, 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 York City of the said cancellation, abandonment or revision, plus any additional expenses incurred by the Railroad in restoring its system to normal operation conditions.

12. Restrictions on Lobbying: Public Law 101-121, Section 319, 31 U.S. Code Section 1352, prohibits the recipient or any lower tier subrecipients of a federal contract, grant, loan or cooperative agreement from expending federal funds to pay any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal contract, the making of any federal grant or loan or the entering into of any cooperative agreement. The Railroad agrees to comply with the Certification of Restrictions on Lobbying attached hereto as Exhibit "B" and made a part of this Agreement, which an authorized official of the Railroad has executed.

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 York City, or as constituting the York City as the representative or general agent of Railroad for any purpose whatsoever.

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.

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:

York Railway Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

by \_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

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**[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