

COMMONWEALTH OF KENTUCKY

TRANSPORTATION CABINET

**RAILROAD COORDINATION FOR CABINET PROJECTS**

**KEEP COST INDIVIDUAL PROJECT AGREEMENT**

**PURSUANT TO KRS 277.065**

*XXX* County

*State Project Number*

*Description*

Item No. *XX-XXXX.XX*

This RAILROAD COORDINATION INDIVIDUAL PROJECT AGREEMENT is made and entered into by and between the Kentucky Transportation Cabinet, Department of Highways, hereinafter the Cabinet, and *Railroad*  hereinafter referred to as the ***Company***.

1. **AGREEMENT PREMISES**
2. The Cabinet and the ***Company***, in the interest of public safety and convenience, propose to enter into an Individual Project Agreement for use due to a Cabinet initiated project which passes either over, under, immediately adjacent to, or at-grade with the ***Company’s*** railroad facilities (the “Project”).
3. The Project is authorized by TC 10-1, Official Order Authorization Numbers ***XXXXX XXX*,** dated ***XX/XX/XX***. The Project may be subject to appropriate reimbursement by the Federal Highway Administration or Cabinet, which as pertains to this Agreement and the amount reimbursable to the ***Company*** in the amount of $***XXXX.XX***
4. The railroad facilities may be impacted by the Project designed by the Cabinet and depicted on the Cabinet’s survey and general plan sheets (the “Plans”).
5. The Project shall be constructed in accordance with the Plans. No changes may be made to the Plans within the vicinity of the ***Company*** facilities without the prior approval of the Cabinet and the ***Company***.
6. **SCOPE OF AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing scope and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.
2. The right of way for the proposed roadwork for the Project will pass over, under or at grade and include certain ***Company*** facilities constructed and now maintained by the ***Company***.
3. The railroad facilities may be impacted to varying degrees by the project and the ***Company*** was authorized to provide preliminary engineering and administration. These services produced an estimate for administration, preliminary engineering, final engineering, construction engineering management, construction, and flagging services to ensure the integrity of the ***Company*** facilities as they may be impacted by the Project as shown on the Plans.
4. The Cabinet acknowledges that by entering into this Agreement (1) the ***Company*** will provide services and accommodations to promote the Project, without profit or other economic inducement typical of other Cabinet contractors; (2) neither the ***Company*** nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to the ***Company*,** by or on behalf of the Cabinet or its contractors, pursuant to the Agreement; and (3) the ***Company*** retains the right to regulate activities affecting its property and operations.
5. The ***Company*** is authorized herein, as prescribed by the Project, to administrate, preliminary and final engineer, inspect, construct and flag as needed to ensure the Project maintains the integrity of the ***Company*** facilities. It is agreed that this work may be performed with the ***Company’s*** regular engineering, administrative and inspection forces.
6. The parties acknowledge and agree that receipt of this Agreement by the ***Company*** from the Cabinet constitutes authorization for the ***Company*** to incur, and receive reimbursement for, costs and expenses incurred in connection with or necessary to ensure the Project maintains the integrity of the ***Company*** facilities.
7. By its review and approval of Plans pursuant to this Agreement, the ***Company*** signifies only that such Plans and improvementsconstructed in accordance with such Plans satisfy the ***Company***’s requirements. The ***Company*** expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the Cabinet or any other personsof the Plans or improvementsconstructed in accordance with the Plans.
8. Insofar as it has the right to do so, the ***Company*** hereby grants Cabinet a nonexclusive license to access and cross the ***Company***’s property, to the extent necessary for the construction of the Project, along such routes and upon such terms as may be defined and imposed by the ***Company*** and such temporary construction easements as may be designated on any Plans for the Project approved by the ***Company***.
9. Insofar as it has the right to do so, and by separate Agreement, the ***Company*** shall grant, without warranty to Cabinet, permanent easements or property for the use and maintenance of the Project wholly or partly on ***Company*** property as shown on the Plans approved by the ***Company***, on terms and conditions and at a price acceptable to the parties. Upon request by the ***Company***, the Cabinet shall furnish to the ***Company*** descriptions and plat plans for the easements.
10. The parties hereto agree that this Agreement and the covenants and conditions contained herein shall be effective as of the Effective Date of this Agreement. This Agreement shall remain in effect for the duration of the Project.

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1. **RESPONSIBILITIES OF THE *Company***

Work in connection with a Project shall be allocated and conducted as follows:

1. If the ***Company*** chooses to use a contractor or a subcontractor, the ***Company*** is required to obtain prior Cabinet approval in writing pursuant to 23 CFR 646.216. The Cabinet reserves the right to refuse reimbursement for any and all costs associated with work performed by a contractor or subcontractor prior to their approval by the Cabinet. The Cabinet is hereby held harmless from all actions taken by a contractor or subcontractor related to the ***Company***’s failure to acquire said approvals. Said work is to be paid under a contract let by the ***Company***, adhering to the cost share stipulations described herein.
2. The ***Company*** shall submit any change orders necessary to the Cabinet for consideration and approval before initiation of the work detailed in said change order. A change order shall be considered in the event there is a change in the scope of work, extra work to be performed, or other major changes in the work covered by this Agreement. Said change order must be reasonably detailed and include proper itemizations from the ***Company***, computed in accordance with the methods and procedures set forth in 23 CFR 635.120. If the ***Company*** fails to obtain prior approval of a change order from the Cabinet, the Cabinet has the right to refuse reimbursement of expenditures for such change order.
3. Subject to timely payment of Reimbursable Expenses as provided by Section *IV Responsibilities of the Cabinet*, the ***Company*** shall perform, or cause to be performed, the ***Company*** work as set forth in this Agreement. The ***Company*** will furnish all equipment and materials in accordance with 23 CFR 140.908 and 23 CFR 140.910. The Cabinet agrees that the ***Company*** shall provide all services that the ***Company*** deems necessary or appropriate to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and the ***Company***’s contractual obligations, including, but not limited to, the ***Company***’s existing or proposed third party Contracts and collective bargaining Contracts. The ***Company*** work may be accomplished by (a) railroad force account, (b) contracting with the lowest qualified bidder based on appropriate solicitation, or (c) existing continuing contracts at reasonable costs as approved by the Cabinet. In addition to using its own forces for ***Company*** work, the ***Company*** may use the services of a contractor which works for the ***Company*** on a routine basis under a written continuing contract, or let the work to contract through competitive bidding with the Cabinet’s concurrence in the award of the contract. In cases of continuing contracts, the Cabinet retains the right to receive, review and approve rates.
4. The ***Company*** shall commence its work under this Agreement following: (a) receipt of a fully executed Individual Project Agreement from the Cabinet; (b) issuance of all permits, approvals and authorizations necessary or appropriate for the work. Construction work pursuant to the Project may commence when the prior terms are satisfied and upon delivery of proof of insurance acceptable to the ***Company***, as required by Section IV. Paragraph 12. The ***Company*** shall give the Cabinet and the Federal Highway Administration, when applicable, ample opportunity to inspect materials recovered by the ***Company*** in accordance with 23 CFR 140.908.
5. The ***Company*** shall perform all design reviews in a period of thirty (30) calendar days from receipt.
6. The ***Company*** shall provide an estimate of the total Reimbursable Expenses for the Project (the “Estimate”, as amended or revised) which is hereby made a part of this Agreement. In the event the ***Company*** anticipates that actual Reimbursable Expenses for a Project may exceed such Estimate, it shall provide the Cabinet with the revised Estimate of the total Reimbursable Expenses in change order form for Cabinet’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate.
7. The ***Company*** shall complete the pertinent sections of the Project Summary Sheet form TC 69-11 and provide it with the Estimate. If more than six (6) months has passed between completing the Project Summary Sheet and the start of construction on the Project or any of the details have changed, the ***Company*** shall complete a new Project Summary Sheet.
8. The Project Information Sheet, Exhibit A, shall indicate if the proposed Project is an ascertainable benefit to the ***Company*** as defined in the 23 CFR 140.914, and supplements. If the proposed work in an ascertainable benefit to the ***Company,*** the ***Company*** shall participate in the cost of the Project as set forth in 23 CFR 646, Subpart B and include the level of participation in the Project Information Sheet. Exhibit A is hereby made a part of this agreement.
9. ***Company*** invoice information shall be included with the payment to identify the specific Project and invoice. The ***Company*** agrees to submit its bills for reimbursement in accordance with 23 CFR 140, Subpart I.
10. Following completion of a Project, the ***Company*** shall submit to the Cabinet a final invoice that reconciles the total reimbursable expenses incurred by the ***Company*** against the total payments received from the Cabinet. In the event that the payments received by ***Company*** from Cabinet exceed the reimbursable expenses, the ***Company*** shall remit such excess to Cabinet.
11. The ***Company*** will compute the actual cost of the work and present these costs on invoices in accordance with the methods and procedures set forth in 23 CFR 140. The method of developing the relocation costs is found in 23 CFR 646.
12. Itemized bills from the ***Company*** will be in detail form that will meet the approval of the Cabinet and the Federal Highway Administration.

**Payments will be made on the following basis in accordance with 23 CFR 140.922:**

* + - 1. **Current Billings.** The ***Company*** may submit current billings reflecting the actual cost incurred during any given work period, in which case, the current billings will be paid within thirty (30) business days after receipt of same by the Cabinet.
      2. **Final Payment.** Upon completion of all said work and the submission of final itemized invoices, deliverables, and drawings, the ***Company*** shall provide one final and complete billing of all remaining costs incurred, within one year following completion of the utility relocation work performed by the ***Company*** pursuant to this Agreement, otherwise previous payments to the utility shall be considered final, except as agreed to between the Cabinet and the ***Company***. The final billing will be forwarded for payment after review and approval of the District Utilities Supervisor and submitted to the Central Office Utilities Section, it being understood, however, that the billings are subject to audit and verification by the Cabinet and/or the Federal Highway Administration.

1. The Cabinet certifies that it is in compliance with the provisions of KRS 45A.695. “Access to contractor’s books, documents, papers, records, or other evidence directly pertinent to the contract.” The ***Company***, as defined in KRS 45A.030(9) agrees that the Cabinet, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The ***Company*** also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.
2. All records of the ***Company*** pertaining to this project will be subject to inspection at any reasonable time by representatives of the Cabinet and/or the Federal Highway Administration, and shall be retained as prescribed in 23 CFR 140.922(c). Such records shall be maintained by the ***Company*** in accordance with 49 CFR 18.42 - *Retention and Access Requirements for Records*.
3. If the project includes a railroad bridge structure over the Cabinet’s facility, the ***Company*** shall own and, at its sole cost and expense, maintain, repair, replace and renew its tracks, ballast and approach embankments, and railroad signal and communication systems, and the ***Company*** shall be permitted to install, maintain, repair and replace other owned utilities, facilities and cable, or cause same to be done, as the ***Company*** authorizes from time to time on or within railroad bridge structures.
4. The ***Company*** shall maintain and repair, at its sole cost and expense, the crossing surface between the ends of its cross ties. The ***Company*** shall maintain and repair the warning signal facilities at the crossing, at the ***Cabinet’s*** cost and expense, as set forth in the Maintenance Contract between the parties.
5. If a Project involves the installation of warning devices, the ***Company*** shall own and maintain the warning devices after the warning devices have been installed and found in satisfactory working order by the parties hereto, so long as it may operate the railroad at the Project crossing or until it is agreed upon between the parties hereto that the warning devices are no longer necessary at the Project crossing or until the Project crossing is abandoned or other legal requirements make it necessary to cease operation and maintenance of the warning devices at the Project crossing. At such time the warning devices shall be moved to another location on ***Company’s*** line within the Commonwealth of Kentucky as agreed upon by the parties hereto. The cost of the maintenance of the warning devices shall be as set forth in the Maintenance Contract between the parties, as revised and/or updated.
6. The ***Company*** agrees to indemnify and hold harmless the Cabinet against any and all third-party claims, demands, obligations or litigation that result from: (a) any material breach of this Agreement by the ***Company***; (b) any and all negligent acts of the ***Company***; and (c) any policy, procedure or employment practice of the ***Company*** violating applicable Federal, State or local laws.
7. The ***Company*** shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of Federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The ***Company*** shall comply with all applicable Federal and State Occupational Safety and Health Administration (OSHA) standards including 29 CFR 1910 and Kentucky Revised Statutes (KRS) Chapter 338.
8. KRS 45A.480 requires the ***Company*** to comply with the Cabinet’s requirements pertaining to workers’ compensation insurance and unemployment insurance. By execution of this Agreement, the ***Company*** agrees that all contractors and subcontractors employed, or to be employed in connection with this Agreement shall be in compliance with Kentucky requirements for Workers’ Compensation Insurance KRS Chapter 342 and Unemployment Insurance KRS Chapter 341.
9. As provided in KRS 337.505 to 337.550, all laborers, workmen and mechanics performing work under the Agreement shall be compensated not less than the prevailing hourly rate of wages as determined by the Commissioner for the Department of Workplace Standards.
10. The Commonwealth of Kentucky and the Cabinet are prohibited from contracting with firms that utilize the services of illegal immigrants in the performance of a contract of goods, services or construction purposes and the performance of a contract with the Commonwealth. By the execution of this Agreement, the ***Company*** agrees not to hire any illegal immigrants itself and to take commercially reasonable measures to ensure that its contractors and subcontractors not utilize the services of illegal immigrants.
11. The ***Company*** affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of this Agreement. The ***Company*** shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

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1. **RESPONSIBILITIES OF THE CABINET**

Work in connection with a Project shall be allocated and conducted as follows:

1. The Cabinet will obtain all necessary licenses and easements, as well as all authorizations, permits and approvals from all local, state and federal agencies (including the Cabinet), and their respective governing bodies and regulatory agencies, necessary to proceed with the Project and to appropriate all funds necessary to construct the Project. Copies shall be provided to the ***Company***.
2. If required and applicable, the Cabinet will recommend approval of the Project to the Federal Highway Administration for construction with funds apportioned to the Cabinet under the Federal Aid Highway Program, and Acts amendatory thereof and supplementary thereto, including Subpart A of 23 Code of Federal Regulations (CFR) 646.
3. All plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at the Cabinet’s sole cost and expense, by the Cabinet or ***Company*** or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of the Cabinet and potentially impacting the ***Company’s*** facilities shall be subject, at the ***Company***’s election, to the review and approval of the ***Company*** in a timely manner. Such plans, specifications and drawings, as prepared or approved by the ***Company***, are referred to as the “Plans”, and shall be incorporated and deemed a part of this Agreement.
4. In the event that it shall be necessary in connection with or incidental to any work on the Project to make any adjustment in facilities of tenants of the ***Company***, such adjustments shall be handled by the Cabinet directly with the owner or owners thereof at no expense to the ***Company***.

1. The Cabinet shall observe and abide by, and shall require its contractors (“**Contractors**”) to observe and abide by the terms, conditions and provisions of the “Special Notes for Protection of Railroad Interests” set forth in Exhibit B to this Agreement (the “**Special Provisions**”) which shall be included in the Contractor’s contract and is hereby made a part of this Agreement. The special provisions are to be fully inclusive of all terms and conditions necessary to be considered by the Project Contractors. To the extent that Cabinet performs Project work itself, the Cabinet shall be deemed a Contractor for purposes of this Agreement. The Cabinet further agrees that, prior to the commencement of work on the Project by any third party Contractor, such Contractor shall execute and deliver to the ***Company*** Exhibit D to this Agreement to acknowledge the Contractor's Contract to observe and abide by the terms and conditions of this Agreement.
2. The Cabinet shall perform, or cause to be performed, all Cabinet work as set forth in the Agreement, at the Cabinet’s sole cost and expense.
3. Cabinet shall reimburse ***Company*** for all costs and expenses incurred by ***Company*** in connection with the Project, including, without limitation: (a) all out of pocket expenses, (b) travel and lodging expenses, (c) telephone, facsimile, and mailing expenses, (d) costs for equipment, tools, materials and supplies, (e) sums paid to ***Company***’s consultants and subcontractors, and (f) ***Company*** labor in connection with the Project including flagging services, together with ***Company*** labor overhead percentages established by ***Company*** pursuant to applicable law (collectively, “**Reimbursable Expenses**”).
4. Cabinet shall pay the ***Company*** for Reimbursable Expenses in arrears for its Reimbursable Expenses incurred for each Project. The ***Company*** agrees to submit invoices to Cabinet for such amounts and Cabinet shall remit payment to ***Company*** within thirty (30) working days following delivery and approval of each appropriately submitted and approved invoice to Cabinet.

1. All ***invoice***s from the ***Company*** shall be delivered to Cabinet in accordance with Section III, Paragraph 12, of ***this Ag***reement. All payments by the Cabinet to the ***Company*** shall be made by electronic payment or check mailed to the following address or such other address as designated by ***Company***’s invoice to the Cabinet:

*Railroad Company*

*Contact*

*Address*

*Address*

1. The Cabinet will reimburse the ***Company*** for the actual cost of the work upon presentation of invoices from the ***Company.*** The ***Company*** will compute costs by and in accordance with the methods and procedures set forth in 23 CFR 140. The method of developing the relocation costs is found in 23 CFR 646.
2. In addition to the insurance that Cabinet requires of its Contractor, Cabinet shall acquire or require its Contractors to purchase and maintain insurance in compliance with the ***Company’s*** insurance requirements attached to this Agreement and defined in Exhibit B. Neither Cabinet nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by the ***Company’s*** Risk Management Department.
3. Cabinet shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Cabinet’s Contractors shall indemnify, defend, and hold ***Company*** and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
4. The Cabinet and its Contractor shall notify the ***Company*** promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

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1. **ADDITIONAL REQUIREMENTS**
2. In addition to the other rights and remedies available to the parties under this Agreement, the parties may terminate work on a Project by delivery of notice to the other party in the event that party or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by ***Company*** to Cabinet.
3. The Cabinet may terminate this Agreement if funds are not appropriated to the Cabinet or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. The Cabinet shall provide the ***Company*** thirty (30) calendar days written notice of termination of the Agreement.
4. If work on a Project is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the work. Accordingly, they agree that, in such instance a party may continue to perform work until it has reached a point where it may reasonably and safely suspend the work. The Cabinet shall reimburse the ***Company*** pursuant to this Agreement for the work performed, plus all costs reasonably incurred by the ***Company*** to discontinue the work and protect the work upon full suspension of the same, the cost of returning the ***Company*** property to its former condition, and all other costs of the ***Company*** incurred as a result of the Project up to the time of full suspension of the work. Termination of work on a Project, for any reason, shall not diminish or reduce the Cabinet’s obligation to pay the ***Company*** for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of work on a Project for any reason, the ***Company’s*** only remaining obligation to the Cabinet shall be to refund to Cabinet payments made to the ***Company*** in excess of Reimbursable Expenses in accordance with Section *III Responsibilities of the Company*.
5. The provisions of this Agreement shall survive the termination or expiration of this Agreement.
6. The parties agree that neither Cabinet nor its Contractors shall be deemed either agents or independent contractors of the ***Company***. Except as otherwise provided by this Agreement, the ***Company*** shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Cabinet or Cabinet’s Contractors, or the construction practices, procedures, and professional judgment employed by Cabinet or its Contractor to complete the Project. Notwithstanding the foregoing, this shall in no way affect the authority of the ***Company*** to prohibit the Cabinet or its Contractors or anyone from entering the ***Company’s*** property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
7. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, Contracts or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
8. This Agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the Parties to be a contract under seal.
9. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party’s obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
10. The ***Company*** may assign this Agreement and all rights and obligations herein to a successor in interest, parent Company, affiliate, or future affiliate. Upon assignment of this Agreement by the ***Company*** and the assumption of the ***Company’s*** assignee of the ***Company’s*** obligations under this Agreement, the ***Company*** shall notify the Cabinet of the assignment and have no further obligation under this Agreement. The Cabinet shall not assign its rights or obligations under this Agreement without the ***Company’s*** prior consent, which consent may be withheld for any reason.
11. The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the Cabinet is required by Executive Order or otherwise to reduce contract hours, the Agreement will be reduced by the amount specified in that document.
12. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to ***Company***:

*Railroad Company*

*Contact*

*Address*

*Address*

If to Cabinet:

Kentucky Transportation Cabinet

Utilities and Rails Branch

200 Mero Street

Frankfort, Kentucky 40622

Attention: Branch Manager of Utilities and Rails

1. The ***Company*** shall comply with the 18 United States Code (U.S.C.) 874 Copeland “Anti-Kickback” Act as supplemented in Cabinet of Labor regulations (29 CFR Part 3).
2. It is agreed by and between the parties hereto that 23 CFR 140, 23 CFR 646, and supplements and amendments thereto form an essential part of this Agreement, and shall in no way be abrogated or superseded by the terms and provisions of this Agreement.
3. By execution of this Agreement, the parties agree that the scope of this Agreement shall be in compliance with all applicable Federal, State and local laws, regulations and mandates. Compliance as described herein includes, but not exclusively, environmental regulations such as: Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR Part 15).
4. Cabinet shall own and, without cost to the ***Company***, maintain, repair, replace and renew, or cause same to be done, in good condition and repair to the ***Company’s*** satisfaction, the railroad bridge structure (excluding only those components which the ***Company*** owns and has agreed to maintain, repair and replace pursuant to this Section), the highway underpass or overpass structure, the roadway surfacing, the roadway slopes, the retaining walls, the roadway drainage facilities, sidewalks and lighting. The permanent aspects of the Project, as shown by the Plans, include roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs. The Cabinet in its maintenance of the facilities agrees to obtain permission from the ***Company*** before undertaking any work which may interfere with or be a real or potential hazard to passage of trains or other railroad operations and complete an Individual Project Agreement if deemed necessary based on the scope of the maintenance work. In the event that the Cabinet fails to properly maintain such structures and improvements, after reasonable notice from ***Company*** (unless an emergency condition exists or is imminent in the opinion of the ***Company***, that requires immediate action), and such failure, in the opinion of the ***Company***, jeopardizes the safe and efficient operation of its property, the ***Company*** may perform such maintenance and repair, at Cabinet’s sole cost and expense. Upon the cessation of use of the Project by the Cabinet, the Cabinet shall remove the improvements and restore the ***Company’s*** property to its original condition, at the Cabinet’s sole cost and expense, to the ***Company’s*** satisfaction.
5. The Cabinet shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of ***Company***, which may be withheld with cause, and the execution of such Agreements as the ***Company*** may require. The ***Company*** may undertake alterations of its property, track or facilities if made necessary by the Project and shall be reimbursed by the Cabinet for the expenses incurred by ***Company*** with respect to the removal and restoration of the crossing in connection with such alteration.
6. The Cabinet reserves the right in its sole discretion to demand that the ***Company*** and all subcontractors immediately cease any portion of, or all further work undertaken within the scope of work of this Agreement. The Cabinet reserves the right at its sole discretion and with thirty (30) days written notice to terminate or suspend the authorization for any and all work, any portion of, or all further work within the scope of work, without the Cabinet incurring any penalty or obligation for the reimbursement of unauthorized further work or expenditure incurred by the ***Company*** after the date of notice of termination. Any authorized services performed, materials used or installed to the satisfaction of the Cabinet before the demand to cease any or all further work shall be paid in accordance with Section III, Paragraph 12. The Cabinet shall thereafter authorize the ***Company*** in writing to undertake only minimal, reasonable and necessary additional work or services and acquire, expend, use or install only minimal, reasonable and necessary additional materials to reestablish the original use and function of their facility.
7. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.
8. To the extent applicable to this agreement, the **Company** shall comply with the Buy America requirements set forth in 23 U.S.C. 313 and 23 CFR 635.410. The **Company** is not required to change its existing standards for materials as long as the applicable Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or relocation of the **Company’s** facilities set forth in 23 CFR 645 and over regulations which allow the **Company** to furnish materials from **Company** stock set forth in 23 CFR 645.117(e). **Company** stock materials that do not meet applicable Buy America requirements may not be permanently incorporated into a FAHP funded project. The **Company** understands and acknowledges that the Agreement may be subject to the requirements of the Buy America law, 23 U.S.C. 313 and applicable regulations, including 23 CFR 635.410 and Federal Highway Administration guidance. The **Company** must provide certification that all products, permanently incorporated into the project adhere to the Buy America requirements.  In lieu of a separate certification, the **Company** hereby certifies that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions. Individual invoices are certified via signature and submission of the statement of charges (TC69-008) form. In some circumstances, a waiver of the Buy America requirements may be granted by the FHWA, to be determined on a project-by-project basis.
9. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

**AGREEMENT EXECUTION**

By the execution of this Agreement, the Parties warrant that they have fully read the Agreement, and agree to the terms and conditions. The ***Company*** warrants that the ***Company*** facilities exist and require active ***Company*** participation on behalf of the ***Company***. The Cabinet warrants that the required services are reimbursable and shall be reimbursed as stipulated herein.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized officers.

This, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2014.

**COMMONWEALTH OF KENTUCKY**

**TRANSPORTATION CABINET APPROVALS**

Approval of the Utilities & Rails Branch

Signature:

TEBM – Utilities and Rails

Date:

Approval of the Division of Right of Way and Utilities

Signature:

Keith McDonald, Division Director

Approved Form and Legality

Signature:

Attorney for Office of Legal Services

Date:

Approval of ***Company***

Printed Representative Name: Date:

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_



