

## **Railroad Agreement Language for Federal-aid Projects involving Railroads**

A detailed agreement will need to be negotiated between the railroad and the LPA. Most railroads have standardized agreements that may be used for this purpose. Regardless of the particular form of agreement used, all railroad agreements for projects that require work on railroad right-of-way or adjustments to railroad facilities must provide the following, where applicable:

1. The provisions of 23 CFR 646, Subpart B, and 23 CFR 140, Subpart I, incorporated by reference.
2. A detailed statement of work to be completed by each party.
3. The method of payment for railroad costs. The preferred method of payment is based on actual costs. However, subject to approval by the Iowa DOT, the lump-sum method may be used for work done by railroad forces for any of the following:
  - installation or improvement of grade crossing warning devices and / or grade crossing surfaces;
  - any eligible railroad work where the estimate cost to the LPA does not exceed \$100,000; or
  - when the Iowa DOT concurs it is in the public's best interest to use this method.

Note: Usually, the Iowa DOT will not approve payment on a lump-sum basis because the historical cost data necessary to justify use of a lump-sum method is not available. If a lump-sum method is used, the Iowa DOT will require periodic reviews of the methods and cost data used by the railroad to develop lump-sum estimates.

4. If the project is not a safety project to eliminate a grade crossing, the extent to which the railroad is obligated to move or adjust its facilities at its own expense.
5. The railroad's share of project costs.
  - In general, the railroad is not required to share in the project costs when there is no ascertainable net benefit to the railroad.
  - When the project will eliminate an existing grade crossing at which active warning devices are either in place or have been ordered to be installed by a State regulatory agency, the railroad is required to pay a minimum of 5 percent of the project costs, within the limits set by 23 CFR 646.210(c).
  - Railroads may voluntarily contribute a greater share of project costs than are required, and other parties may also voluntarily assume the railroads share of project costs.
6. An itemized estimate of the cost of work to be completed by the railroad.
7. The method for performing railroad work. Railroad construction may be accomplished by any of the following methods:
  - force account (work done by railroad forces),
  - a competitive contract award,
  - a contractor retained as part of an existing continuing railroad contract, provided the cost is reasonable, or
  - a non-competitive contract award for minor work, provided the cost is reasonable.
8. The maintenance responsibilities of each party.
9. The form, duration, and amounts of any needed insurance. Such insurance shall comply with the requirements of 23 CFR 646, Subpart A.
10. References to the plans and specifications that describe the proposed work.
11. Provisions that specify the type of protective services (such as railroad flaggers) the railroad will provide or require the conditions under which they are required during the performance of the work, and the method of payment to the railroad for these services.
12. Provisions that address the inspection of any recovered materials. These provisions shall allow the LPA to inspect any materials salvaged by the railroad in order to agree upon the credit (if any) to be applied toward the Federal participation in the cost of the railroad work, as required by 23 CFR 646.216(c)(2).

13. Appendix A and Appendix E of the [Standard DOT Title VI Assurances](#). This language is required whether Federal funds are used for the work covered by the railroad agreement or not.
14. Buy America provisions. If the project requires railroad work that is eligible for Federal participation, regardless of whether Federal funds are actually used or not, the agreement shall include provisions that require the railroad to comply with the Buy America law at 23 U.S.C. 313 and its implementing regulations at 23 CFR 635.410. The agreement shall also require the railroad to maintain records to support its compliance. A sample agreement provision, where “COMPANY” is the railroad and the “AGENCY” is the LPA, is provided below:

“All portions of the project performed by the COMPANY shall be in compliance with the Buy America Requirements, as set forth in 23 CFR 635.410 and 23 USC 313, as amended by Section 1518 of P.L. 112-141. Before incorporating any iron or steel products into the work, the COMPANY shall provide the AGENCY with manufacturer’s certifications indicating that all manufacturing processes for iron and steel, including the application of coatings, have occurred in the United States, unless granted a waiver pursuant to 23 CFR 635.410.”

The Iowa DOT recommends the agreement require the railroad to use a step-certification process, whereby each corporate entity involved in the manufacturing process (from melting to fabrication) on transfer of the intermediate product, certify that its product complies with Buy America. This process produces a “chain of custody” documentation trail that can be used to verify compliance.

Regardless of the type of certification process used, the LPA shall retain the certifications provided by the railroad as part of its Federal-aid project file for which the railroad work was eligible. These records shall be retained for at least 3 years after FHWA approval of the final amendment / modification document for the project, as described in Section 9.3 of the [Federal-aid Project Development Guide](#).

The Iowa DOT will review the LPA’s file for Buy America certifications during field reviews or during the project close-out process. If Federal-aid reimbursement is requested for this work, the LPA shall also provide these certifications to the Iowa DOT with its reimbursement request(s).

For additional guidance concerning the Buy America requirements, refer to FHWA’s [Buy America Construction Program Guide](#).