



RIGHT-OF-WAY OPERATIONS MANUAL

Chapter Forty-Six Railroad Agreements

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Table of Contents

Section	Page
46-1 OVERVIEW AND TYPES OF AGREEMENTS	1
46-1.1 General	1
46-1.2 Construction and Maintenance Agreement	2
46-1.3 Flagging Agreement.....	2
46-1.4 Project-Related Signal Agreements	3
46-2 STANDARD PROJECT-RELATED AGREEMENT PROVISIONS.....	4
46-2.1 Railroad Insurance Requirements.....	4
46-2.2 Railroad Flagging – Notification and Work Schedules.....	4
46-2.3 Preliminary Engineering Charges.....	5
46-2.4 Easements	5
46-2.5 Recovered Materials	5
46-3 RAILROAD APPLICATION PLANS (PROJECT-RELATED)	6
46-4 PROCESSING PROJECT-RELATED CONSTRUCTION AND MAINTENANCE AGREEMENTS	7
46-4.1 Submission of Application to Railroad	7
46-4.1.1 Burlington Northern and Santa Fe Railway Company	7
46-4.1.2 Montana Rail Link.....	7
46-4.1.3 All Other Railroads	8
46-4.2 Processing After Execution by Railroad	9
46-5 NON PROJECT RELATED AGREEMENTS	11
46-5.1 Freestanding Railroad Improved-Surface Grade Crossing Agreements.....	11
46-5.2 Track Out-of-Service Agreement.....	11
46-6 REFERENCES	12

46-1 OVERVIEW AND TYPES OF AGREEMENTS

46-1.1 General

When construction of a Federal-aid project requires the use of railroad property or adjustment of railroad facilities, the Montana Department of Transportation (MDT) Utilities Section writes an agreement. The agreement is developed through discussions with the railroad. An application for approval and execution of the resulting agreement is submitted to the railroad. The written agreement must:

- reference appropriate Federal regulations.
- incorporate plans and specifications in the agreement package.
- include detailed statements of the work to be performed by each party.
- adequately identify property rights to be acquired (e.g., temporary construction permit, easement, or other property interests).
- itemize estimated costs of work to be performed by the railroad.
- identify the State's and railroad's share of project costs.
- prescribe the method of payment (i.e., actual costs or lump sum).
- describe the method of work performance, either by railroad forces or contract forces.
- define the conditions requiring protective services during performance of work and the method of reimbursement to the railroad.
- describe the type, amount and duration of insurance required.
- specify maintenance responsibility provisions; and
- provide for inspection of recovered materials.

The Department uses several types of agreements with railroad companies. They are similar for the most part but have some significant differences that address specific situations. The major types of agreements are described in the following Sections.

46-1.2 Construction and Maintenance Agreement

When construction work is required on railroad facilities that are not already subject to a highway easement, or when new property rights are acquired, a Construction and Maintenance Agreement (Forms RWRR-381, RWRR-381-BN, RWRR-381-MRL) is required. This type of agreement also is commonly referred to as a “Railway-Highway Agreement.” This binding agreement between the State and the railroad establishes who will perform the work (i.e., the railroad’s forces or the Department’s contractor). It also sets the method of payment, either actual cost or lump sum.

The agreement may grant a right of entry to the State pending receipt of an executed easement from the railroad. The agreement contains railroad insurance requirements and a flagging protection clause. These provisions are mandatory when the State’s contractor is to perform work on the railroad right-of-way.

The State prepares any easements required by the Construction and Maintenance Agreement, as described in Section 46-2.5. These easements constitute a covenant in the agreement.

Representatives of the Utilities Section, the affected railroad, and the District Administrator’s office perform a field review to establish the most satisfactory and economical method of adjustment. The railroad facilities, as shown on the preliminary construction plans, are checked against the actual configuration on the ground to ensure that topography is correctly shown. The review also allows for evaluation of minor changes to the Department’s Road design if that will result in a more economical method of adjustment to the railroad facilities.

When the plans and work proposals are acceptable to all parties, the railroad submits a formal and complete estimate to the Department. The submission includes detailed plans, establishing the method and manner of the railroad adjustment. The Utilities Section reviews and approves, or requests modifications to, the estimate.

46-1.3 Flagging Agreement

When construction work is required within an existing highway easement obtained from the railroad, a Flagging Agreement generally is adequate if an existing Construction and Maintenance Agreement or easement covers the area of the proposed work. The letter agreement, like all agreements for projects where the State occupies the railroad right-of-way, provides that the special provisions of the State’s construction contract will include flagging requirements and insurance provisions, including Railroad Protective Insurance, as specified by the railroad. The name and telephone number of the railroad’s road master, as contact person, are included.

If the existing agreement is insufficient to cover the proposed work, a new Construction and Maintenance Agreement is required.

46-1.4 Project-Related Signal Agreements

A separate multi-party (two or more) Signal Agreement (Form RWRR-437) applies to project-related signal work. The Utilities Section obtains signal location information and clear zone safety protection requirements from the Preconstruction Bureau. The project scope of work report includes railroad signal installation, signing and pavement marking information.

The Signal Agreement provides that upon completion of the installation of the crossing signal equipment, the railroad will operate and maintain the crossing signal equipment in a proper condition at the railroad's expense.

Both MDT and the railroad execute the agreement. The completed signal agreement is archived with the Department's Safety Bureau, respective District Office and the Right-of-Way Bureau, Helena.

46-2 STANDARD PROJECT-RELATED AGREEMENT PROVISIONS

The Department requires that every project-related agreement with a railroad address certain issue. These items are described in the following Sections.

46-2.1 Railroad Insurance Requirements

The Department must provide a certificate of Commercial General Liability Insurance, Business Automobile Policy Insurance and Worker's Compensation Insurance to the railroad prior to the commencement of work on railroad property. Additionally, the contractor must furnish to the railroad a Railroad Protective Insurance policy with the railroad as a named insured. When 2 railroads are named as users, 2 policies are required. The railroad agreement must specify the policy amounts and coverage limits.

46-2.2 Railroad Flagging – Notification and Work Schedules

The State's contractor submits to the District Administrator a detailed schedule of work activities that may require railroad flagging. The District Administrator transmits this information to the railroad at least 30 working days before the activity begins.

The railroad furnishes flagging services according to the contractor's work schedule and the railroad's union agreement(s). The schedule shows duties of work, shift numbers, hours, location, and type of work. Work requiring railroad flagging cannot be done unless railroad flaggers are present.

Railroad flagging services for short-term operations, not exceeding 10 working days, may be available by notifying the railroad not less than 5 working days before work begins. The availability of this short-term service depends on availability of railroad personnel and the railroad's union agreements(s).

When work is scheduled but not performed for more than 3 consecutive working days, the cost of railroad flagging is deducted from the contractor's estimate. This does not include delays caused by weather or any other delays beyond the control of, and due to no fault of, the contractor.

The railroad company is the sole judge whether railroad flagging is required. Work activities that typically require railroad flagging are:

- blasting, grading, or operating near tracks with the potential for covering tracks with rocks or debris.

- excavation or other work near the tracks.
- work over the tracks; and
- work with the potential to damage communications or other railroad facilities or to disrupt rail traffic.

46-2.3 Preliminary Engineering Charges

The Department may reimburse a railroad for its preliminary engineering costs in connection with an MDT project. The amount paid is negotiated with the railroad. Upon final approval of the railroad agreement for the project, these charges are paid to the railroad. The payment is processed by the Utilities Section and paid by the Right-of-Way Bureau Real Estate Services Section as described in Section 45-1.4.

46-2.4 Easements

Railroad easements (Forms RWRR-355, RWRR-355-BN, RWRR-355-MRL) are prepared by the Utilities Section in conjunction with the Real Estate Services Section. The easement includes a description that is checked by the Right-of-Way Design/Plans Section.

Railroad easements are different from standard roadway easements because they contain covenants for the operation, maintenance, and expansion of railroad facilities. The standard covenants in the easements used by the Department are arrived at through negotiations with the railroad. The Right-of-Way Bureau Chief signs the easements indicating the Department's acceptance of the covenants.

46-2.5 Recovered Materials

The State does not accept creosote-treated wood from the railroad. The railroad disposes of the creosote-treated wood products with their approved method as a cost to the project. The district can request retention of untreated temporary planking at the field review. If the temporary planking is to be retained by the State all the planking is stockpiled at the site, including damaged planking.

46-3 RAILROAD APPLICATION PLANS (PROJECT-RELATED)

The Utilities Section obtains from the Right-of-Way Design/Plans Section:

- 3 sets of the project's right-of-way plans,
- 2 sets of bridge plans,
- 2 sets of construction plans (plan and profile), and
- 2 sets of cross-section plans.

One set of the above-mentioned plans is full-size, the rest are half-size. These plans are used in the application process as described below.

The right-of-way plans show the new highway easement that is to be obtained from the railroad as shaded and the new temporary construction permits as cross-hatched. Highway plans are to be completed in accordance with the **Montana Road Design Manual**. Construction plans (plan and profile) include all summaries and typical sections.

Early in the negotiation process, the Utilities Section typically forwards to the railroad company 2 sets of right-of-way plans (1 full and 1 half-size), shaded and cross-hatched showing the encroachments on railroad right-of-way. The Utilities Section also sends 1 set each of the construction plans (plan and profile) and highway cross sections covering the road construction that affects the railroad. The railroad company uses the plans to carry out field reviews with the Utilities Section and the District, as appropriate, and to aid them in their estimate preparation for railroad agreements.

The Utilities Section retains 1 set of all plans for later reference. If the Department and the railroad agree on any terms that require changes to the plans, those revisions are completed prior to the Department's submission of a formal application to the railroad under Section 46-4.2. The Utilities Section together with the Design/Plans Section provide the necessary exhibits that are attached to the agreements and easements.

46-4 PROCESSING PROJECT-RELATED CONSTRUCTION AND MAINTENANCE AGREEMENTS

46-4.1 Submission of Application to Railroad

Once negotiations on a project railroad agreement conclude and the internal Department review is complete, the Utilities Section sends a formal application to the railroad for processing. The application includes the Construction and Maintenance Agreement and the Easement. Procedures vary according to the railroad involved.

46-4.1.1 Burlington Northern and Santa Fe Railway Company

The Utilities Section sends applications for agreements with the Burlington Northern and Santa Fe Railway Company to its Manager. The application materials are as follows:

- right-of-way plans – 1 copy,
- construction plans (plan and profile) – 1 copy,
- cross-sections – 1 copy,
- draft version of the Construction and Maintenance Agreement – 1 copy,
- final version of the Construction and Maintenance Agreement (Form RWRR 381-BN) – 2 copies, and
- Easement (Form RWRR-355-BN) with the State's Offer of Just Compensation – 1 copy.

Easements acquired from the Burlington Northern and Santa Fe Railway Company are sent to its Manager, Logistics and Property Services, for execution. The Department requests that the easement be returned within 30 days.

46-4.1.2 Montana Rail Link

Montana Rail Link holds fee title to some rail lines. Montana Rail Link also leases certain portions of the Burlington Northern and Santa Fe Railway Company main line. Whenever there is a proposed agreement or easement affecting that leased property, the Burlington Northern and Santa Fe Railway Company reviews and executes the documents after Montana Rail Link has executed the agreement and easement.

Application documentation provided to Montana Rail Link depends upon which type of line is involved. Applications for work affecting all lines operated by Montana Rail Link are sent to Montana Rail Link's Chief Engineer.

The Utilities Section provides the following documentation to Montana Rail Link:

- right-of-way plans – 2 copies.
- construction plans (plan and profile) – 1 copy.
- cross sections – 1 copy.
- draft version of the Construction and Maintenance Agreement – 1 copy.
- final version of the Construction and Maintenance Agreement (Form RWRR 381-MRL) – 3 copies.
- in the case of fee-owned property, 2 copies of the Easement (Form RWRR 355-MRL) with the State's Offer of Just Compensation; and
- in the case of a line leased from the Burlington Northern and Santa Fe Railway Company, 3 copies of the Easement (Form RWRR 355-MRL) with the State's Offer of Just Compensation.

46-4.1.3 All Other Railroads

For railroads other than the Burlington Northern and Santa Fe Railway Company and Montana Rail Link, the Utilities Section sends applications, easements, and materials to the appropriate railroad designee. The documentation consists of:

- right-of-way plans – 2 copies.
- construction plans (plan and profile) – 1 copy.
- cross sections, if appropriate – 1 copy
- draft version of the Construction and Maintenance Agreement – 1 copy.
- 2 or 3 copies of the final version of the Construction and Maintenance Agreement (Form RWRR-381), as required; and
- 2 or 3 copies of the Easement (Form RWRR-355), as required.

46-4.2 Processing After Execution by Railroad

Upon receipt of the signed agreement and signed easement from the railroad, the Utilities Section processes all railroad agreements as described below. Note that if the agreement involves property leased by Montana Rail Link, the Utilities Section sends the signed agreements and the easement to Burlington Northern and Santa Fe Railway Company's Manager, Public Projects for signature. At the same time, within MDT, a copy of the agreement is furnished to the Compliance Review and Fiscal Programming Sections. All other processing steps for these agreements occur after receipt of the signed agreement from Burlington Northern and Santa Fe Railway Company. The Utilities Section processes the agreement as follows:

1. Forward 1 copy of the estimate to the Fiscal Programming Section. If the agreement stipulates an actual cost payment of more than \$125,000 on National Highway System or Interstate rights-of-way, the Fiscal Programming Section transmits the estimate to the Federal Highway Administration (FHWA) for approval.
2. Send 2 copies of the agreement to the District Administrator. The appropriate District administers the railroad agreement.
3. Send 1 copy of the agreement to the Contract Plans Section to incorporate the agreement requirements into the contract special provisions. The Utilities Section works with the project designer to accomplish the incorporation.
4. Determine the MDT office that will authorize activities under the agreement. Authorization for the railroad to order materials and start work comes from the district when the MDT ready date is 3 months beyond the agreement completion date. Otherwise, approval comes from the Utilities Section.
5. Set the work authorization date. The Utilities Section contacts the district by telephone to verify the project's ready date. Authorization to order materials and start work will come from the district at the appropriate time. The Utilities Section can give the railroad tentative approval to acquire materials and begin work at the time the Utilities Section sends the railroad a copy of the approved agreement if all requirements are satisfied at that time (including receipt of the completed FHWA Form PR 1240, if applicable).
6. Distribute copies of the fully executed Construction and Maintenance Agreement as follows:
 - a. One copy is sent to the railroad, along with tentative approval to acquire materials and begin work.
 - b. One copy is sent to the Right-of-Way Bureau files.

- c. One copy is sent to the Department's Construction Bureau.

Once the final agreement is distributed, the Utilities Section processes the preliminary engineering payment (Form RWRR-524) to the railroad.

Upon completion and signing of the easement, which typically occurs after the distribution of the final agreement, the Utilities Section sends the project file to the Real Estate Services Section. The file should include the following completed documents:

- Right-of-Way Agreement – Enumerating Negotiation Considerations (Form RWRR-637),
- Right-of-Way Parcel Review and Audit (Form RWRR-1A), and
- Request and Approval of Payment (Form RW-110).

Transmittal of the file to the Real Estate Services Section usually constitutes the closing activity for the Utilities Section with respect to the project. The transmittal includes a request for payment of the compensation for the easement to the grantor. In the case of easements involving lines leased by Montana Rail Link, the Department pays all monies offered as just compensation to Montana Rail Link rather than Burlington Northern and Santa Fe Railway Company.

After the Real Estate Services Section records the easement, it distributes the signed easement and places the file into the Right-of-Way Bureau's permanent records. The signed easement is distributed as follows:

- 1 original (with recording information) to the railroad, with a copy to BNSF on MRL leased lines,
- 1 original to the Right-of-Way files, and
- 1 copy to the District Administrator.

46-5 NON-PROJECT RELATED AGREEMENTS

46-5.1 Freestanding Railroad Improved-Surface Grade Crossing Agreements

Freestanding railroad improved-surface grade crossing projects on the National Highway System and STPP systems are nominated by the District Administrators. Free standing improved surface projects on Federal-Aid STP road systems are nominated by the city or county controlling the roadway.

When a Federal program is approved, the Utilities Section secures a crossing agreement (Form RWRR-391) according to current policy, under which the State pays a lump sum per track foot to the railroad and the railroad is responsible for all track work and installation of the crossing surface. The road authority is responsible for all asphalt removal and replacement, traffic control and detours. In most cases, the road authority closes the road during the installation of the crossing surface.

46-5.2 Track Out-of-Service Agreement

When a railroad has a track that is not in operation and the State or the railroad desire to eliminate the crossing, a Track Out-of-Service Agreement (Form RWRR-321) is used. The agreement maintains the integrity of the railroad right-of-way and promotes public safety by removing the crossing.

The agreement also designates responsibility for removal of the crossing and the reinstallation of a new crossing in the future. The basis of the agreement is that the road authority is responsible for all roadwork and traffic control. The railroad is responsible for all track work and all crossing work. All work is to be accomplished in a coordinated effort when removing or reinstalling the track.

46-6 REFERENCES

1. *Montana Road Design Manual*, Montana Department of Transportation, December 2000.