

RIGHT OF ENTRY AGREEMENT

Executed Date: _____
(DEPARTMENT will enter date)

Agreement No. _____
Federal ID No. _____

THIS RIGHT OF ENTRY AGREEMENT, made and entered into by and between the Commonwealth of Pennsylvania (“COMMONWEALTH”), acting through the DEPARTMENT of Transportation (“DEPARTMENT”),

And

WITNESSETH:

WHEREAS, the DEPARTMENT and the CORPORATION have agreed to enter into this Agreement for State highway repair and/or reconstruction at the following locations (the Project):

State Route (S.R.)	Begin Station	End Station	Begin Segment/Offset	End Segment/Offset

WHEREAS, the CORPORATION desires to perform the Project at its sole cost and expense because the State highway right-of-way is in a condition that is unsuitable for the vehicles and heavy equipment that will use it for access to the CORPORATION’s proposed commercial operations; and,

WHEREAS, The CORPORATION has requested that the DEPARTMENT permit the CORPORATION, its employees, agents, representatives and contractors to enter the State highway right-of-way for the purpose of performing the Project; and,

WHEREAS, the DEPARTMENT, by reason of its exclusive authority and jurisdiction over all State-designated highways, as conferred by Section 2002(a)(10) of the Administrative Code of 1929, as amended, 71 P.S. § 512(a)(10), its authority to issue permits for the opening of the surface of State highways, as conferred by Section 420 of the State Highway Law of 1945, 36 P.S. 670-420, and its authority to condition access to weight-restricted State highways on such undertakings necessary to cover the costs of repair and restoration pursuant to 75 Pa.C.S. 4902, is enabled to authorize and permit the CORPORATION's activities, uses, and entries made pursuant to this Agreement; and,

WHEREAS, the DEPARTMENT requires that such use of the State highway right-of-way be subject to a written right of entry.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

1. The above recitals are incorporated into and made an integral part of this Agreement.
2. The DEPARTMENT hereby grants the CORPORATION, its employees, agents, representatives, and contractors a right of entry to the State highway right-of-way consistent with the terms and conditions of this Agreement. The DEPARTMENT shall be notified at least forty-eight (48) hours before the CORPORATION begins any work within the right-of-way, and the CORPORATION, its employees, agents, representatives, or contractors shall not interfere with DEPARTMENT operations.
3. All work done and materials furnished under and by virtue of this Agreement shall conform to and be governed by the plans and specifications prepared by the CORPORATION at its cost and expense and approved by and on file with the DEPARTMENT. The work shall be subject to the DEPARTMENT's approval and shall not begin until the approval has been granted. The Project design may be amended only upon written consent of the DEPARTMENT. For purposes of this paragraph written consent of the DEPARTMENT may be provided by the District Executive or such other DEPARTMENT employee as designated by the District Executive. Upon completion of the work, the CORPORATION shall submit a written statement of completion, in a form acceptable to the DEPARTMENT, which the DEPARTMENT shall review and sign, if the DEPARTMENT agrees the Project has been satisfactorily completed.
4. The CORPORATION shall comply with all federal, state, and local laws, regulations, and ordinances in the conduct of its operations within the State highway right-of-way.
5. Project design and construction shall be in accordance with plans, policies, procedures, criteria and specifications prepared or approved by the DEPARTMENT, including, but not limited to, the most current versions of the following:
 - (i) DEPARTMENT Publication No. 70M, *Guidelines for Design of Local Roads and Streets*;
 - (ii) DEPARTMENT Design Manuals (Publication Nos. 10, 10A, 13M, 14M, 15M, 16M and 24);
 - (iii) DEPARTMENT Policy Letters;
 - (iv) DEPARTMENT Form No. 442, *Bureau of Design Specifications for Consultant Agreements*, Division I; and
 - (v) DEPARTMENT Publication No. 408, *Specifications*, its supplements and amendments.
6. The CORPORATION shall secure all necessary approvals, permits and licenses from all other governmental agencies, as may be required. The CORPORATION's obligations include responsibility for preparing and revising environmental impact statements, environmental assessments, categorical exclusions, environmental reports and other documents required by law or environmental litigation; and the defense of environmental litigation resulting from the planning, design or construction of the Project. At the DEPARTMENT's request, the CORPORATION shall furnish to the DEPARTMENT evidence of the approvals, permits, licenses and approved environmental documents.
7. The CORPORATION shall be responsible for accommodating any involved utilities and obtaining permits for any required utility relocation, at the CORPORATION's cost and expense.

8. The CORPORATION covenants and warrants that all work and labor pursuant to this Agreement shall be done and performed in the best and most professional manner and that prompt payment shall be made in full for all labor and materials used in the work; that all of the materials and labor shall be conform to the DEPARTMENT's specifications; and that any sketches and descriptions, as approved or as modified and revised and approved, and the Project itself, at all times, shall be subject to the inspection and approval of the DEPARTMENT or its representatives. If any of the materials or labor destined for use or used within the State highway right-of-way are rejected by the DEPARTMENT as defective, unsuitable, or otherwise contrary to approvals, then those materials shall be removed and replaced with other approved materials; and the labor shall be performed anew to the DEPARTMENT's satisfaction and approval, at the CORPORATION's cost and expense.
9. The CORPORATION shall provide the DEPARTMENT with a monthly report on the progress of the Project. The report shall provide information on the amount of work completed, the amount of work remaining to be done, and any problems encountered during the course of work.
10. The CORPORATION shall provide any and all documentation requested by the DEPARTMENT regarding the construction, including but not limited to all documentation related to compliance with federal, state, and local laws, regulations, and ordinances within seven (7) days of the request by the DEPARTMENT. The CORPORATION shall permit the DEPARTMENT representatives to inspect the construction activities, at the DEPARTMENT's discretion, and shall reimburse the DEPARTMENT for any and all inspection costs within 30 days after receipt of the DEPARTMENT's invoice.
11. If the CORPORATION is notified by any federal, state, or local agency that it is not in full compliance with any federal, state, or local law, regulation, or ordinance, associated with the construction and maintenance of any aspect of the Project, the CORPORATION shall immediately correct any such violation or deficiency and shall cease all operations until the CORPORATION is in full compliance. The CORPORATION shall provide the DEPARTMENT with written notice of any such notification.
12. The CORPORATION, at no cost to the DEPARTMENT, shall promptly provide the DEPARTMENT with copies of all laboratory results and reports compiled by its employees, agents, representatives, or contractors relating to the Project, that show the condition of the soil and the groundwater beneath the State highway right-of-way, or that detail any activity performed by the CORPORATION under this Agreement.
13. All costs incurred with regard to any activities conducted by the CORPORATION, its employees, agents, representatives, and contractors pursuant to this Agreement shall be borne solely by the CORPORATION without contribution by the DEPARTMENT. The CORPORATION shall be liable for all costs and expenses incurred by the DEPARTMENT pursuant to this Agreement, including but not limited to costs related to inspections, permitting, plan reviews, and administration. The DEPARTMENT may bill for these costs periodically and the CORPORATION agrees to pay all invoices promptly.
14. The CORPORATION shall, and shall require its contractor(s), subcontractor(s) and consultant(s) to provide the DEPARTMENT with a certificate of insurance evidencing coverage of injury, death, or property damage from any or all causes which may arise out of its presence on the State highway right-of-way in the minimum amounts of two-hundred-fifty-thousand dollars (\$250,000.00) per person and one-million dollars (\$1,000,000.00) in the aggregate (occurrence-based insurance). The Commonwealth of Pennsylvania and the DEPARTMENT shall be named as additional insureds on these policies.
15. The CORPORATION shall, and shall require its contractor(s), subcontractor(s) and consultant(s), to fully indemnify the COMMONWEALTH from any and all liability, loss, or damage that the COMMONWEALTH, its officers, agents and employees may suffer as a result of any and all claims, demands, costs, or judgments of any type made against the COMMONWEALTH as a result of granting this Agreement, including, but not limited to, fines, penalties, claims, demands, costs, or judgments arising from the presence of the CORPORATION, its contractor(s), consultant(s) and/or their officers, agents, and employees or others within the State highway right-of-way or any work or other actions taken by any of them pursuant to or in violation of this Agreement, or as a result of any failure of any of them to conform to all pertinent statutes, ordinances, regulations, or other requirements of any governmental authority in connection with this Agreement. This provision is intended to include claims, demands, costs or judgments resulting from a negligent act or omission of the COMMONWEALTH, its officers, agents, and employees with respect to this Agreement or the subject thereof. The CORPORATION waives any immunity from liability to the COMMONWEALTH from damages, contribution or indemnity provided by Section 303 of the Worker's Compensation Act, Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §481. IT IS THE INTENT OF THIS PROVISION TO ABSOLUTELY ABSOLVE AND PROTECT THE COMMONWEALTH, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL LOSS BY REASON OF THIS AGREEMENT.

The CORPORATION agrees to defend (if requested) the COMMONWEALTH, its officers, agents and employees, against any and all claims brought or actions filed against the COMMONWEALTH, either as an original or an additional defendant, with respect to the subject of the indemnity contained herein in the previous paragraph, whether such fines, penalties, claims or actions are rightfully or wrongfully brought or filed. The CORPORATION hereby waives any and all rights to join the COMMONWEALTH as an additional defendant in any actions arising as a result of the grant of this Agreement. Notwithstanding the foregoing provisions, The CORPORATION agrees that the DEPARTMENT may employ attorneys of its own selection to appear and defend any claims or actions on behalf of the DEPARTMENT.

16. The CORPORATION shall assume full responsibility for involved utility facilities as provided by Act of December 10, 1974 (P.L. 852, No. 287) (73 P.S. 176-182), as amended, concerning protection of the public health and safety by preventing excavation or demolition from damaging underground utility facilities.
17. If the CORPORATION, its employees, agents, representatives, or contractors damage the State highway right-of-way (where damage means any change to the State highway right-of-way including but not limited to leaving any items on or in the State highway right-of-way, changing any contour of the State highway right-of-way, adding any material, pollutant, or contaminant to the State highway right-of-way by spillage, leaking or by any method), then the CORPORATION shall restore any affected portion of the State highway right-of-way to a condition acceptable to the DEPARTMENT.
18. The CORPORATION agrees to reimburse the DEPARTMENT for any necessary expenses, attorneys' fees, or costs incurred in the enforcement of any part of this Agreement within ninety (90) days after receiving written notice that the DEPARTMENT has incurred them.
19. This Agreement shall not be considered to be authorization to the CORPORATION or its contractors to encroach on the property of others. If the CORPORATION must enter upon land situated outside the DEPARTMENT's right-of-way that is owned by a third party, the CORPORATION shall, at its own expense, secure any necessary authorization, release, or right of entry. The CORPORATION shall be required to provide evidence of permission to enter upon an abutting or adjoining property owner's land, if requested by the DEPARTMENT.
20. Upon satisfactory completion of the Project and acceptance of the work as meeting the DEPARTMENT's standards and requirements, the DEPARTMENT shall resume its normal maintenance responsibilities as required under the State Highway Law, and in accordance with existing policies within the DEPARTMENT.
21. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Agreement. Therefore, this Agreement is subject to, and the CORPORATION shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, attached as Exhibit "A" and made a part of this Agreement. As used in this Agreement, the term "Contractor" refers to the CORPORATION.
22. The CORPORATION shall comply, and shall cause its consultants and contractors to comply, with the *Contractor Responsibility Provisions*, the *Provisions Concerning the Americans with Disabilities Act*, and the *Contractor Integrity Provisions*, which are attached as Exhibits "B", "C", and "D" respectively, and made a part of this Agreement. As used in these provisions, the term "Contractor" means the CORPORATION.
23. The parties agree, and the CORPORATION shall also provide in its contracts and subcontracts for the Project, that all designs, plans, specifications, estimates of cost, construction, utility relocation work, right-of-way acquisition procedures, acceptance of the work and procedures in general, shall at all times conform to all applicable federal and state laws, rules, regulations, orders and approvals, including specifically the procedures and requirements relating to labor standards, equal employment opportunity, non-discrimination, anti-solicitation, information, auditing and reporting provisions. The CORPORATION shall comply, and shall cause its contractors to comply, with the conditions set forth in the *Commonwealth Nondiscrimination/Sexual Harassment Clause*, which is attached as Exhibit "E", and made a part of this Agreement. As used in this clause, the term "Contractor" means the CORPORATION.
24. If the CORPORATION fails to comply with the terms of this Agreement to the DEPARTMENT's satisfaction, the DEPARTMENT may terminate the Agreement upon giving ten (10) days' written notice to the CORPORATION. If the Agreement is terminated, then neither party shall be further obligated to the other, except to the extent that the CORPORATION shall restore the state highway to its pre-work conditions. If the restoration is not completed to the DEPARTMENT's satisfaction within thirty (30) days of the DEPARTMENT's demand, then the DEPARTMENT may perform the required restoration and the CORPORATION shall reimburse the DEPARTMENT for the cost of the work.
25. This Agreement constitutes the entire Agreement between the parties and may not be modified or amended except in writing, and the rights and obligations hereunder may not be transferred or assigned without the prior written consent of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Right of Entry Agreement the date first above written.

ATTEST:

Title: DATE

CONTRACTOR*

BY _____
Title: DATE

DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary DATE

APPROVED AS TO LEGALITY AND FORM

BY _____
for Chief Counsel DATE

BY _____
Deputy General Counsel DATE

BY _____
Deputy Attorney General DATE

FUNDS COMMITMENT DOC. NO. _____
CERTIFIED FUNDS AVAILABLE UNDER SAP NO. _____

SAP COST CENTER _____
GL. ACCOUNT _____
AMOUNT _____

BY _____
for Comptroller Operations DATE

*Please provide resolution authorizing signatures, if necessary.