



WEIGHT RESTRICTED HIGHWAYS PROGRAM

PLEASE TYPE OR PRINT ALL INFORMATION IN BLUE OR BLACK INK

Effective Date: _____
(Date to be filled in by Department)

AGREEMENT NO. : _____
 FEDERAL ID NO. : _____
 MPMS/ECMS NO. : _____

CONTRIBUTION AGREEMENT

THIS CONTRIBUTION AGREEMENT for work on a highway used for heavy hauling operations (the Agreement) is made between the Commonwealth of Pennsylvania, Department of Transportation (DEPARTMENT)

And

COMPANY

WITNESSETH:

WHEREAS, the DEPARTMENT and the COMPANY have agreed to perform State highway repair and/or reconstruction at the following locations (the Project):

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

WHEREAS, the COMPANY has offered to contribute funds to the DEPARTMENT's Project because it desires to improve the State highway right-of-way to a condition that is suitable for the vehicles and heavy equipment that will use it for access to the COMPANY'S proposed commercial operations;

WHEREAS, the DEPARTMENT is willing to perform the Project, with its own forces or by contract, subject to reimbursement by the COMPANY as provided in this Agreement;

WHEREAS, the Project is estimated to cost \$ _____;

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 COMPANY's activities, uses, and entries made pursuant to this Agreement; and,

WHEREAS, the parties desire to enter into this Agreement to set forth their respective obligations and responsibilities for the Project.

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following terms, conditions, and provisions:

1. **Recitals**

The recitals set forth above are incorporated by reference as a material part of this Agreement.

2. **Plans and Specifications**

The DEPARTMENT, by contract or with its own forces, shall design and construct the Project in accordance with policies, plans, procedures and specifications prepared and/or approved by the DEPARTMENT, which are incorporated herein by reference as if physically attached hereto.

3. **Inspection**

The DEPARTMENT shall, with its own forces or by contract, provide staff to adequately inspect and supervise construction work on the Project, in accordance with the approved plans and specifications.

4. **Contribution Amounts**

The COMPANY shall pay to the DEPARTMENT:

A total amount of \$ _____, payable in full upon execution of this Agreement. The DEPARTMENT will not begin any work on the Project until the amounts have been paid.

A total amount of \$ _____, payable upon completion of the Project.

A total amount of \$ _____, payable in _____ equal installments as follows:
_____.

Milestone payments of \$ _____, payable upon _____, _____, payable

upon _____, and _____, payable upon _____. If a milestone payment is due upon execution of this Agreement, the DEPARTMENT will not begin any work on the Project until the amounts have been paid.

_____ Percent (_____%) of the actual costs associated with the Project, estimated to be \$_____.

5. **Payment**

The COMPANY understands that estimated amounts listed above are made with the best information currently available, and that if the COMPANY is responsible for a percentage of the actual costs, those costs may exceed the estimated amount. If periodic or a final payment is required, as outlined in Section 4, the DEPARTMENT shall submit invoices to the COMPANY during design and construction of the Project specifying the items constituting the total cost the COMPANY is obligated to pay, and the COMPANY shall make payment to the DEPARTMENT in full within forty-five (45) days of receipt of the invoice.

6. **Termination**

The DEPARTMENT may terminate this Agreement if funds are not provided for the Project. Termination shall be effected by delivery to the COMPANY of a Notice of Termination specifying the reason for termination and the date such termination is to be effective. The COMPANY shall compensate the DEPARTMENT for work performed or for services provided prior to the date of the Notice of Termination.

7. **Indemnification**

Unless otherwise agreed to by the parties in writing, in addition to the COMPANY's reimbursement obligations under preceding Section 4, the COMPANY shall, where applicable, indemnify, save harmless and (if requested) defend the DEPARTMENT, its agents and employees from, and be solely responsible for, the payment and satisfaction of all awards, judgments, claims, costs and damages, including costs of appraisers and attorneys, witness fees, and other court costs and expenses resulting from the following:

- (a) Changes required to be made to the DEPARTMENT's approved plans and/or specifications for the Project made necessary by requests by and for the COMPANY.
- (b) Time delays and extensions of time or termination of construction work on the Project requested or caused by the COMPANY.
- (c) Right-of-way and other property damages resulting from the acquisition and/or condemnation of the lands necessary for the construction of the Project. Right-of-way and other property damages, as used in this paragraph, shall include, but not be limited to, consequential damages; damages arising from de facto or inverse takings; special damages for displacement; damages for the preemption, destruction, alteration, blocking and diversion of facilities; and any other damages that may be claimed or awarded within the purview of the Eminent Domain Code of 1964, as amended, the State Highway Law of 1945, as amended, and/or eminent domain case law of the Commonwealth of Pennsylvania; and claims awarded or entered against the DEPARTMENT and/or the COMPANY.

- (d) Relocation of utility facilities, including but not limited to, gas, water, railroad, sewer, electric, telecommunications or drainage facilities, in the Project area and made necessary by the Project, to the extent that those damages are made necessary by requests by and/or for the COMPANY.
- (e) Preparation or revisions of environmental impact statements, negative declarations, environmental reports or other documents required by law and/or environmental litigation; public environmental hearings made necessary by the planning, design and/or environmental litigation; public environmental hearings made necessary by the planning, design and/or construction of the Project; and any or all increased planning, design, construction, utility relocation and right-of-way costs resulting therefrom, to the extent that those documents and hearings are made necessary by requests by and/or for the COMPANY.
- (f) All other unforeseen costs and expenses not included in the said estimate of construction costs for the Project, but which are directly related to or caused by the planning, design and/or construction of the Project, to the extent that those costs and expenses are made necessary by requests by and/or for the COMPANY.

8. Security

Unless the COMPANY's contribution is paid as a lump sum before any design or construction work commences, the COMPANY agrees to execute and deliver to the DEPARTMENT security to secure the performance of the COMPANY's financial obligations under this Agreement, in one of the following forms: Performance Bond, Cashier's Check, Certified Check, Irrevocable Letter of Credit, or other security acceptable to the DEPARTMENT, in the amount of \$_____. If the Project is performed by a contractor and the contract price, as bid and awarded, exceeds this estimate, the COMPANY may be required to provide additional security up to the full amount of the contract price, plus an additional ten percent (10%) contingency, all at the DEPARTMENT's sole discretion. The DEPARTMENT may elect to postpone some or all of the work until the appropriate security has been delivered to the DEPARTMENT. Upon the COMPANY's full contribution to the DEPARTMENT as required by this Agreement, the security required by this paragraph will be returned to the COMPANY.

9. DEPARTMENT Discretion Retained

Nothing contained in the Agreement shall be deemed to be a waiver by the DEPARTMENT of its discretion to abandon or postpone the Project for any reason.

10. Required Provisions

The COMPANY agrees to comply with the *Commonwealth Nondiscrimination/Sexual Harassment Clause*, and the *Provisions Concerning the Americans with Disabilities Act*, which are attached hereto as Exhibits "A" and "B," respectively.

11. Right-to-Know Law

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Agreement. Therefore, this Agreement is subject to, and the COMPANY shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, attached as Exhibit "E" and made a part of this Agreement. As used in this Agreement, the term "Contractor" refers to the COMPANY.

12. **Effective Date**

This Agreement will not be effective until all necessary Commonwealth officials as required by law have executed it. Following full execution, the DEPARTMENT will insert the effective date at the top of Page 1. This Agreement shall remain in effect until the Project is abandoned or completed, whichever occurs first.

13. **Agreement Modification**

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.

14. **Department Costs**

The COMPANY agrees to reimburse the DEPARTMENT for any necessary expenses, attorneys' fees, or costs incurred in the enforcement of any part of this Agreement within 90 calendar days after receiving written notice that the DEPARTMENT has incurred them.

15. **No Authority to Encroach**

This Agreement shall not be considered authorization to the COMPANY or its contractors to encroach on the property of others. If the COMPANY must enter upon land situated outside the DEPARTMENT's right-of-way that is owned by a third party, the COMPANY shall, at its own expense, secure any necessary authorization, release, or right of entry. The COMPANY shall be required to provide evidence of permission to enter upon an abutting or adjoining property owner's land, if requested by the DEPARTMENT.

16. **Notice**

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.

Notice to the COMPANY shall be sent to:

Notice to the DEPARTMENT shall be sent to:

or to such other names or addresses as the parties may provide to each other in writing.

17. **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.

18. **Titles Not Controlling**

Titles of sections are for reference only, and shall not be used to construe the language in this Agreement.

19. **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.

20. **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.

21. **Choice of Law**

The Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania and the decisions of the Pennsylvania courts. The Contractor consents to the jurisdiction of any court of the Commonwealth of Pennsylvania and any federal courts in Pennsylvania, waiving any claim or defense that such forum is not convenient or proper. The Contractor agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Pennsylvania law.

22. **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 the COMPANY and the DEPARTMENT, or as constituting the DEPARTMENT as the representative or general agent of the DEPARTMENT for any purpose whatsoever.

23. **Assignment**

This Agreement may not be assigned by the COMPANY, either in whole or in part, without the written consent of the DEPARTMENT.

24. **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.

25. **Force Majeure**

Neither party shall be liable for failure to perform under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such

causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.

26. **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.

[Remainder of Page Left Intentionally Blank]

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

ATTEST

COMPANY

DATE

BY _____
DATE

Signature: _____

Signature: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

If a COMPANY, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.

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

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
Deputy Secretary of Transportation DATE

APPROVED AS TO LEGALITY
AND FORM

FUNDS COMMITMENT DOC. NO. _____

CERTIFIED FUNDS AVAILABLE UNDER

SAP NO. _____

SAP COST CENTER _____

BY _____
for Chief Counsel Date

GL. ACCOUNT _____

AMOUNT _____

BY _____
Deputy General Counsel Date

BY _____
for Comptroller Date

BY _____
Deputy Attorney General Date