

FID No. 256001056  
Contract No. 101020130  
SAP Vendor No. 159022  
Permit No. 20221129305  
MPMS No. 112933  
Effective Date \_\_\_\_\_

## **PRIVATE STATUS AGREEMENT FOR UTILITY**

THIS PRIVATE STATUS AGREEMENT FOR UTILITY ("Agreement") is made by and between the COMMONWEALTH OF PENNSYLVANIA, acting through the Department of Transportation, located at P.O. Box 3362, 400 North Street, 7<sup>th</sup> Floor, Harrisburg, Pennsylvania ("DEPARTMENT")

and

the CRANBERRY TOWNSHIP with its principal place of business located at 2525 Rochester Road, Suite 400, Cranberry Township, Pennsylvania ("UTILITY"), collectively referred to hereafter as the "Parties".

### **W I T N E S S E T H**

WHEREAS, the DEPARTMENT, is about to undertake a highway construction project on State Route 3020, Section 298, in Cranberry Township, Butler County, Pennsylvania ("Project");

WHEREAS, it is necessary for the DEPARTMENT to acquire a portion of the UTILITY's existing private right of way located at Station 131+87 to 164+04 on State Route 3020 for the Project;

WHEREAS, the DEPARTMENT's Project requires the adjustment or relocation of those facilities of the UTILITY located in the right of way required by the DEPARTMENT; and

WHEREAS, the Parties wish to provide for their concurrent occupancy of the right of way required by the DEPARTMENT and for reimbursement by the DEPARTMENT of any expenses that the UTILITY may subsequently incur if future highway plans should require adjustment or relocation of those facilities of the UTILITY located in the required right of way.

NOW, THEREFORE: In consideration of the foregoing premises and the mutual covenants hereinafter contained and with the intent to be legally bound hereby, the Parties agree as follows:

1. Private Status - The facilities to be located within the legal right of way of State Route(s) 3020, in accordance with this Agreement, are not presently located within the legal right of way limits of any public highway. These facilities, listed on Exhibit "A", attached and made a part of this Agreement, together with any additions to and replacements made by the UTILITY, will continue to be regarded by the DEPARTMENT as if they were located outside of the legal right of way for the purpose of determining responsibility for future relocation costs. In the event a relocation of the facilities is required by the DEPARTMENT in the future, the DEPARTMENT will be responsible for reimbursement of relocation costs and for providing a substitute right of ways.

2. Subordination to the Highway Easement - The UTILITY agrees that all property rights which the UTILITY has within the required right of way are subordinate to the highway easement acquired, or to be acquired, by the DEPARTMENT for the Project. The DEPARTMENT has provided functional replacements, either by the acquisition of a substitute right of way or as otherwise specifically provided for herein. The UTILITY shall retain all other existing rights, if any, to occupy the required right of way with its facilities. Subsequent construction, alteration, operation, or maintenance of the facilities, adjusted pursuant to this Agreement shall, except as otherwise herein provided, be in accordance with the highway occupancy provisions of this Agreement and the current Highway Occupancy Regulations of the Department of Transportation and, where applicable, the Federal Highway Administration.

3. 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 UTILITY shall comply with, the clause entitled Contract Provisions - Right to Know Law, attached as Exhibit "B" and made a part of this Agreement. As used in this Agreement, the term "Contractor" refers to the UTILITY.

4. 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.

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

6. 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 of Pennsylvania 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.

7. No Waiver - Either party may elect not to enforce its rights and remedies under this Agreement in the event of a breach by the other party 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.

8. 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 UTILITY and the DEPARTMENT, or as constituting the DEPARTMENT as the representative or general agent of UTILITY for any purpose whatsoever.

9. Assignment - This Agreement may not be assigned by the UTILITY, either in whole or in part, without the written consent of the DEPARTMENT. Consent will not be unreasonably withheld.

10. No 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.

11. Notices - 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.

12. 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.

13. Choice of Law – This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Commonwealth of Pennsylvania (without regard to conflict of law provisions) and the decisions of the Pennsylvania courts. The UTILITY 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 UTILITY 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.

14. Effective Date – This Agreement shall become effective on the date that it is fully executed by the UTILITY and the DEPARTMENT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date of the last signature affixed below.

ATTEST

CRANBERRY TOWNSHIP

BY \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

BY \_\_\_\_\_  
Title: \_\_\_\_\_ Date: \_\_\_\_\_

***If a Corporation, 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.***

[COMMONWEALTH SIGNATURES ON NEXT PAGE]

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY \_\_\_\_\_  
Central Office Utility Administrator Date

APPROVED AS TO LEGALITY  
AND FORM

PRELIMINARILY APPROVED

BY \_\_\_\_\_  
for Chief Counsel Date

BY \_\_\_\_\_  
Senior Counsel Date

BY \_\_\_\_\_  
Deputy General Counsel Date

FUNDS COMMITMENT DOCUMENT  
NO. U101020130000  
AMOUNT \$0.00

BY \_\_\_\_\_  
Deputy Attorney General Date

BY \_\_\_\_\_  
N/A  
for Comptroller Operations Date

Prior Pre-approved Form:  
OGC No. 18-FA-61.2  
Appv'd OAG 10/27/2014  
Utility Relocation

### **Locations of Utility Facilities for Private Status:**

- Longitudinal on SR 3020 from station 131+87 to 134+21 RT
- Longitudinal on SR 3020 from station 137+99 to 142+44 RT
- Longitudinal on SR 3020 from station 139+51 to 141+89 LT
- Longitudinal on SR 3020 from station 163+30 to 164+04 LT

### **Contract Provisions – Right to Know Law**

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
  1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
  2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.



h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.