

**REAL PROPERTY INTERESTS AGREEMENT
FOR DELDOT PROJECTS**

This Real Property Interest Agreement for DelDOT Projects herein called "License", made this day of _____ 2022, by and between the Department of Transportation of the State of Delaware hereinafter called the "DEPARTMENT" and _____ hereinafter called "LICENSEE,"

WITNESSETH:

Whereas, the **DEPARTMENT** is owner in fee of a certain tract of land, tax parcel _____, consisting of approximately X.XX acres +/-, known as _____, located at _____, in _____ County, State of Delaware and more particularly shown on the attached Exhibit "A"; and

Whereas, the **LICENSEE** has requested the **DEPARTMENT** to license a portion of said land interests hereby considered to be the designated "Contractor Area" consisting of _____ as outlined in red on the attached Exhibit "B" to the **LICENSEE** for a storage area for DelDOT Project T_____, titled _____, " by DelDOT's Division of _____, hereinafter called the "**PROJECT**"; and

Whereas, the **DEPARTMENT** is desirous of cooperating with the **LICENSEE** to this end:

NOW, therefore, it is agreed by the parties hereto in consideration of the following annual License payment; One Dollar (\$1.00). The **DEPARTMENT** hereby demises and licenses to the **LICENSEE** the herein described premises for a period of _____ (X) years commencing on _____ and terminating on _____. Subsequent requests for renewals will be reviewed upon receipt of written request 60 days prior to the end of the term of the License. Said License and subsequent renewals will be received and reviewed by the **DEPARTMENT**. At no point shall the term of the License extend past the acceptance of the **PROJECT**; it shall be considered null and void at such time.

This License shall be subject at all times to the following terms and conditions:

1. No use of the area shall impair the full use and safety of the **DEPARTMENT**; or otherwise interfere with the free flow of traffic.
2. All access, be it vehicular or pedestrian, will be permitted to said area to and from _____.
3. **USE OF THE CONTRACTOR AREA:** The licensed premises shall be used by **LICENSEE** for a storage area exclusively for the **PROJECT**, and for materials approved for such storage by the **DEPARTMENT** as listed below under **STORAGE**. Under no circumstances shall **LICENSEE** use this premises for storage of any other material and/or for any other purpose, including conducting any business, profession, or trade of any kind. The **DEPARTMENT** shall be entitled to fair compensation should the licensed premises be used for anything other than the approved uses, with such compensation to be determined by the **DEPARTMENT** in its sole reasonable discretion.
4. **ALTERATIONS:** No improvements shall be placed on the licensed premises, nor alterations made on or to the licensed premises without prior written consent of the **DEPARTMENT**. The

LICENSEE will make the following improvements to the premises as part of the **STORAGE** listed below including: _____

as directed by the **DEPARTMENT** Engineer. The cost of these improvements will be borne by **DEPARTMENT** under agreed upon Contract prices under the **PROJECT**. Furthermore, the **LICENSEE** is permitted to install, maintain, and remove a porta-potty at their cost for the duration of material **STORAGE**, for use by its personnel.

5. **ENTRY AND ACCESS:** **LICENSEE** shall permit the **DEPARTMENT** and/or the **DEPARTMENT**'s agent to enter the Contractor Area at all times, without notice, for the purpose of inspecting the Contractor Area or showing the same to prospective **LICENSEES**, or for any other reasonable purpose. The **DEPARTMENT** further reserves the right to take possession thereof in the case of national or other emergency. The **DEPARTMENT**, police, first responders, and the local fire department shall have immediate access to the licensed area at all times, including those times outside of normal business hours and shall be provided with a physical key to any lock and/or a currently valid entrance code to a keypad on any and all gates to ensure immediate access to all identified areas at all times.

Access to the property by the **LICENSEE** shall be restricted to the following hours. Changes to the schedule must be coordinated with the **DEPARTMENT** in writing prior to any deviations.

Monday through Friday: _____ AM to _____ PM OR _____ Full Access Granted

Pre-Approval Required for the After Hours: YES / NO / N/A (circle one)

Weeknights: _____ PM to _____ AM/PM; _____ N/A

Weekends: _____ AM to _____ PM; _____ N/A

6. **INSPECTION AND CONDITION OF CONTRACTOR AREA:** **LICENSEE** shall have seven (7) calendar days after the date of first occupancy to provide the **DEPARTMENT** with a written list of any defective conditions of the Contractor Area which comes to **LICENSEE**'s attention that **LICENSEE** does not wish to have repaired at its expense upon vacation of the Contractor Area at the time of termination of this Agreement. Said written list shall be effective only if accepted, in writing, by the **DEPARTMENT** as a true, correct, and accurate listing of defects. Excepting the above mentioned written list, **the LICENSEE** stipulates that it has inspected the Contractor Area, including the grounds and all buildings and improvements contained within, and that they are, at the time of this Agreement, in good order and repair and in a safe and clean condition and in compliance with all applicable laws, regulations, and other requirements.

7. **INSPECTION BY THE DEPARTMENT:** The **DEPARTMENT** shall have the right to conduct condition inspection of the Contractor Area and provide inspection reports to the **LICENSEE**. The **LICENSEE** shall comply with all inspection reports within a time period to be determined by the **DEPARTMENT** upon completing such inspection(s), including but not limited to Certified Construction Review (CCR) inspection reports and Industrial National Pollutant Discharge Elimination System (NPDES) inspection reports, provided by the **DEPARTMENT** or the **DEPARTMENT**'s agent. If two or more unsatisfactory inspection reports are received, the **DEPARTMENT** shall have the right to terminate this Agreement per the **TERMINATION BY THE DEPARTMENT** provision. In the event that the **DEPARTMENT** shall decline to terminate

this Agreement in any such circumstances, the **DEPARTMENT** reserves the right to terminate this Agreement in the event of any subsequent unsatisfactory inspection(s) and that shall not be deemed as a waiver of the **DEPARTMENT**'s rights.

8. **USE BY SUBCONTRACTOR(S):** This License shall not be assigned or sublet without prior written consent by the **DEPARTMENT**. In the event that such permission is given, such subcontractor shall be deemed subject to the terms of this Agreement. The **LICENSEE** shall communicate the requirements of this Agreement to any and all subcontractors associated with the **PROJECT** that are using the Contractor Area. The **LICENSEE** shall be fully and absolutely responsible and liable, without limitation, for all actions of any subcontractors utilizing the Contractor Area.
9. **MAINTENANCE AND REPAIRS:** **LICENSEE** shall, at its own cost and expense, keep the licensed premises in good repair and in compliance with all governmental regulations relating to the use and appearance of the property. **LICENSEE** shall maintain the property, at **LICENSEE**'s expense, in a good state of repair and be responsible for correcting any damage to the premises caused by **LICENSEE**.
10. **TERMINATION BY THE DEPARTMENT:** The **LICENSEE** acknowledges that the Contractor Area may be required for use by the **DEPARTMENT** and that the **DEPARTMENT** shall have the right to terminate this Agreement for any reason whatsoever by providing **LICENSEE** with a thirty (30) calendar day written notice. In the event of such termination, **LICENSEE** shall remove all of its personal property prior to the expiration of said 30-day period. In that event, **LICENSEE** shall be responsible for acquiring any other property rights necessary for its purposes, including, but not limited to, its staging and storage needs. In such event, the **LICENSEE** shall bear full and absolute responsibility for any costs associated therewith. Further, in such event, the **LICENSEE**'s inability to access, use, or occupy the Contractor Area shall not, in any manner whatsoever, revise, change, or limit the **LICENSEE**'s duties or obligations under its contract(s) associated with the **PROJECT** connected with this Agreement. For further clarification and the avoidance of doubt, such inability shall not, in any circumstances, be grounds to make any revisions to deadlines nor costs associated therewith.
11. **VACATION OF CONTRACTOR AREA:** The **LICENSEE** shall yield the immediate possession of the licensed premises back to the **DEPARTMENT** upon termination or revocation of this License and said premises shall be restored to its original condition. The **LICENSEE** shall move all equipment, supplies, and other materials from the Contractor Area prior to the **PROJECT**'s Primary Inspection, if not already done so. The Contractor Area shall be restored to equal or better conditions than prior to use by the **LICENSEE**. In the event **LICENSEE** fails in its maintenance obligation, the **DEPARTMENT** may enter onto the premises for such purpose and the **LICENSEE** shall be responsible for any and all costs incident hereto. Maintenance includes the overall condition of the grounds and any improvements made to the property thereto (e.g., access road, fencing and erosion and sediment, etc.). Project Acceptance shall not occur until the Contractor Area has been restored to the satisfaction of the **DEPARTMENT**.
12. **LICENSEE** shall not permit any unlawful or immoral practice to be committed or carried on by any person(s) whatsoever on the licensed premises, nor shall **LICENSEE** permit or allow the sale, dispensing, or consumption of alcohol or illegal drugs on the premises.
13. **STORAGE:** Only advanced purchased materials, including _____, and/or similar material, are permitted to be stored on this property. The property will be used for storage purpose

only for the **PROJECT**, and will not serve as a laydown area. The **LICENSEE** is not permitted to store any other materials or equipment on the property without written approval from the **DEPARTMENT**. Any unauthorized storage of materials than those listed above or other items for purposes deemed by the **DEPARTMENT** to be a potential fire or other hazard to the highway and the operation and maintenance of the space will be subject to regulation by the **DEPARTMENT** to protect against fire or other hazards impairing the use, safety, and appearance of the highway. **LICENSEE's** use and occupancy of the licensed premises shall not permit hazardous, noxious, or objectionable fumes, vapors, or odors to rise above the licensed space. The identification of what items constitute "hazardous materials" shall be as determined by **DEPARTMENT**, in its sole reasonable discretion, to include any items that may cause damage to any structures and/or the right of way areas. Any and all use of the identified areas shall be consistent with federal, state, and local laws, regulations, and requirements. Any staging and/or stockpile area(s) outside the project's Limit of Construction that individually or cumulatively are larger than 10,000 square feet must be approved by the **DEPARTMENT's** Archaeologist.

14. **CONFORMITY TO DEPARTMENT POLICIES:** The **LICENSEE** shall adhere to all applicable **DEPARTMENT** policies. Explicitly, the Occupancy and Storage requirements set forth in Section B of P.I. R-04, *Joint Use of Right of Way Beneath Roadway Structures*, and copied below, shall be applicable to all locations where the Contractor Area is adjacent to or beneath an above-grade roadway structure.
 - B.1. No Hazardous Materials of any kind will be permitted under a structure or within the DelDOT right of way at any time. These include, but are not limited to, items listed in federal regulations at 49 CFR, Part 172.
 - B.2. No vehicles or materials will be permitted to be stored within ten feet of the underside of girders or other structural elements, or within ten feet of any side of a pier or column.
 - B.3. No storage material may exceed a height of fifteen feet above ground level.
 - B.4. All permanent storage materials must be fenced in a manner as described in the property lease.
 - B.5. No material or vehicles may be stacked or stored in a manner that obstructs or interferes with DelDOT's ability to inspect and maintain the bridge.
 - B.6. No long lasting combustible materials such as tires, plastic traffic cones, wooden pallets, or other rubber or plastic items may be stored, regardless of location.
 - B.7. No items may be stored which could emit noxious fumes or odors.
 - B.8. No items may be stored which could fall or lean against any pier or column.
 - B.9. No smoking is permitted on the property.
 - B.10. No heating equipment will be permitted on the property.
 - B.11. No materials may be permitted which are deemed by DelDOT to be hazardous, or may cause damage to the structure or the right of way.
15. **ENVIRONMENTAL FINES:** The **LICENSEE** shall be absolutely responsible for any and all violations incurred by the **DEPARTMENT** within the designated Contractor Area during the time which the **LICENSEE** is accessing, using, and/or occupying the Contractor Area, or if the **LICENSEE** has failed to properly restore the Contractor Area at the termination of this contract. The **LICENSEE** shall indemnify and hold harmless the **DEPARTMENT** in connection with any such violations.
16. **SIGNS:** No new signs will be permitted on the licensed premises without prior consent from **DEPARTMENT**.

17. **INDEMNIFICATION:** LICENSEE agrees to indemnify the DEPARTMENT, and their respective officers and employees, against any and all actions or claims which may be asserted or brought against the DEPARTMENT that are based upon the LICENSEE's acts or omissions in connection with LICENSEE's use and occupancy of the demised property. LICENSEE agrees to hold the DEPARTMENT, and their respective officers and employees, harmless from any and all claims relating to this Agreement, including but not limited to any issues relating to the fitness of the site for the intended uses and purposes as stated herein, including any environmental fines incurred by the DEPARTMENT due to the actions of the LICENSEE while leasing the land. In case of fire or casualty, the DEPARTMENT is not liable to LICENSEE for any losses. The DEPARTMENT neither approves or disapproves of the design of the facility or any uses and LICENSEE agrees that it is not relying upon the engineering judgement of the DEPARTMENT in entering into this Agreement.
18. The LICENSEE, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said licensed premises described in this License for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the LICENSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
19. The LICENSEE, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) that LICENSEE shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
20. That in the event of breach of any of the above nondiscrimination covenants, the DEPARTMENT shall have the right to terminate the License and to re-enter and repossess said land and the facilities thereon and hold the same as if said License had never been made or issued.
21. If all or part of the licensed premises is ever needed for highway purposes, this agreement shall be rescinded or modified at the sole discretion of the DEPARTMENT, and any land needed by the DEPARTMENT will revert for its use at no cost or expense to the DEPARTMENT.
22. It is expressly understood and agreed that whereas the DEPARTMENT's consent or agreement is required under any provision of this License.

23. All notices, consents, or approvals required to be given by either party to the other hereunder shall be in writing, addressed and mailed as follows:

**Department of Transportation
Right-of-Way
Land Services Section**

**P. O. Box 778
Dover, DE 19903
Telephone No.: (302) 760-2240
FAX No.: (302) 739-2881**

Contractor Information to Follow

In witness whereof, the parties have executed this License of Real Property Interests and affixed their respective seals the day, month, and year first written above.

FOR THE LICENSEE

AGREED:

Witness

Name, Title
Company

FOR THE DEPARTMENT OF TRANSPORTATION

APPROVED Administering Section of Project:

Witness

Name
Title, Section

APPROVED Administering Section of the Property:

Witness

Name
Title, Section