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| **Logo  Description automatically generated with medium confidence** | Kentucky Transportation Cabinet  Division of Right of Way & Utilities  **NO CHARGE UTILITY RELOCATION**  **AUTHORIZATION AGREEMENT** |

**GENERAL ROAD PROJECT** **INFORMATION**

**County:**

**Federal Number** *(if applicable)***:**

**State Number:**

**Route/Road Name:**

**Item Number:**

**Estimated Right of Way Clearance Date:**

**Estimated Letting Date:**

**COMPANY INFORMATION**

**Company:**

**Contact:**

**Address:**

**PROPOSED SCOPE OF WORK** *(Please report major items only):*

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**PROPOSED SCHEDULE:**

The Company shall complete the relocation of said facilities within the schedule specified in this Agreement, which shall not exceed **\_\_\_\_\_\_\_\_** consecutive days, after a written notice to proceed has been received by the Company. *(Required)*

*The Company schedule shall commence on the Cabinet’s right-of-way clearance date or right-of-entry date provided to the Company by the Cabinet in a written authorization to begin work or notice to proceed.   Any alterations to the right-of-way clearance or right-of-entry date shall be provided to the Company by the Cabinet and the schedule shall commence pursuant to the amended date. Extensions to the schedule may be granted if agreed to by the Company and Cabinet, including force majeure and weather events.   Any property right needs of the Company outside of permission to access Cabinet right-of-way shall be secured in advance of the above clearance date or may be secured by the Cabinet via a separate easement agreement with the Company and payable by the Company. The road contract shall include a calculated completion date for this relocation based upon the right of way clearance date and the Company schedule as defined in this Agreement.  Failure to complete the work within the schedule defined herein may result in additional road project costs and claims.*

Proposed Completion date\*: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \**Required but may be provided via amendment prior to actual letting date*

Approved by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (KYTC) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company)

**ATTACHMENTS:**

**Utility relocation plans** *(required)*   **List of parcels needed to relocate**   **Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

IF APPROVED BY THE TRANSPORTATION CABINET, THE UNDERSIGNED COMPANY AGREES TO DO THE WORK OUTLINED ABOVE AT NO COST TO THE CABINET, TO BE COMPLETED IN COMPLIANCE WITH THE TERMS SET FORTH HEREIN INCLUDING DURATION.

**FOR CABINET USE ONLY:**

**Recommended:** District Utility Agent / Rail Coordinator Date

**Recommended:** Chief District Engineer (N/A for Rails) Date

**Recommended:** T.E.B.M, Utilities and Rail Branch Date

COMPANY**:**

Authorized Representative Signature Date

**TERMS AND CONDITIONS:**

1. These facilities are located on **PUBLIC RIGHT OF WAY** or are otherwise **NOT COMPENSABLE** in accordance with **KRS 179.265**:
2. This document confirms that your Company will be relocating and/or adjusting its facilities at no cost to the Transportation Cabinet. A Cabinet authorization is required for any facilities to be located on Public Right of Way. The attached Utility Relocation Plan upon Cabinet approval and issued authorization number will constitute an authorization for any facilities to be relocated. This form shall be submitted by the date that estimates have been requested along with plans showing the proposed relocation, and an estimate of time required to complete the relocation will be needed.
3. Any structure which would normally be removed as part of the highway construction project; but will require prior removal to expedite your utility relocation should be reported to the District Utility Supervisor.  This notification should be in writing and contain the parcel number, owner's name, and the approximate station number of the structure to be removed.
4. If specific parcels for right-of-way are necessary for your Company's relocation to be accomplished, please provide a list of the parcels to the District Utility Supervisor. The Department will prioritize the purchase of right-of-way where, if possible, these parcels will be cleared first.
5. ABOVE GROUND: All features pertaining to the relocation of your Company's facilities that will be visible will be located on the Cabinet’s plans with precise location denoted.  This will include poles, anchors, line markers, pedestals, meters, valves, etc.
6. BELOW GROUND: These features will be located on the Cabinet's plans with precise location AND elevation denoted.  Long, level, parallel runs of material (pipe, conduit, etc.) can be located at each terminating end; otherwise, facilities are to be located at each change in direction (horizontally), or elevation (vertically), and each point of significance to either the utility facility, or the roadway construction.  Such a point may be where it is necessary for a portion of a relocated facility to be placed within the proposed construction limits.  Where it is necessary for your relocated facility to cross under the mainline, approach roads, and/or entrances a cross-section drawing is to be included in the relocation plans.
7. Cabinet Accommodation Policy provides among other standards, minimum height and depth, casing, and material requirements for utilities within state right-of-way.  Exceptions may be made only where policy may be deemed impractical, does not interfere with highway maintenance, safety, or aesthetics.  It is at the discretion of the Chief District Engineer to determine where exceptions are to be allowed.
8. Construction on the relocation of your Company's facilities should not begin until notice to proceed has been given by the District Office.  Additionally, the District Office shall be notified when the Company's relocation work begins.
9. On any relocation project, all work within the limits of the Cabinet’s right-of-way shall be done in accordance with the Cabinet’s Standards, Specifications, and Standard Drawings. All traffic control will be in accordance with Part VI of the Manual on Uniform Traffic Control Devices & KYTC Permits Manual. Backfilling and bedding, if required and/or necessary, will be performed in accordance with the most recent version of the Roadway Drainage Installations (RDI) section of the Cabinet’s Division of Highway Design Standard Drawings or as directed by the Cabinet’s engineer. Surface restoration, if required, will be performed in accordance with details as shown in the most recent version of the Cabinet’s Standard Specifications for Road and Bridge Construction and the Permits Manual, or as directed by the Cabinet’s engineer.
10. The Authorization, including this Agreement and all related and accompanying documents and drawings making up the permit, remains in effect and is binding upon the Company, its successors, and assigns, as long as the encroachment(s) exists and also until the Company is finally relieved by the Cabinet from all its obligations.
11. The Company shall meet all requirements of the Clean Water Act if the project will disturb one acre or more, the Company shall obtain a permit from the Kentucky Division of Water. All disturbed areas shall meet the requirements of the Cabinet's Standard Specifications, Sections 212 and 213, as amended.
12. To the extent applicable to this agreement, the Company shall comply with the Buy America requirements set forth in 23 U.S.C. 313, 23 CFR 635.410, 48 FR 53099, and Infrastructure Investment and Jobs Act (IIJA), 117-58, including the Build America, Buy America Act (BABA) 117-58, Section 70301-52 for the permanent inclusion of articles, materials, or supplies classified as iron or steel or a construction material. Pursuant to final rule made effective December 27, 1983, citation 48 FR 53099, FHWA funded projects are exempted from the manufactured products requirement which is hereby excluded herein. Final rule 48 FR 53099 does not waive the applicability of Buy America requirements to any steel, or iron component of a manufactured product regardless of the overall composition of the manufactured product. The Company is not required to change its existing standards for materials as long as the applicable Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or relocation of the Company’s facilities set forth in 23 CFR 645 and over regulations which allow the Company to furnish materials from company stock set forth in 23 CFR 645.117(e). Company stock materials that do not meet applicable Buy America requirements may not be permanently incorporated into a FAHP funded project. The Company understands and acknowledges that the Agreement may be subject to the requirements of the Buy America law, 23 U.S.C. 313 and applicable regulations, including 23 CFR 635.410, IIJA, BABA, and Federal Highway Administration guidance. The Company must provide certification that all products permanently incorporated into the project adhere to the Buy America requirements.  In lieu of a separate certification, the Company hereby certifies that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions. Products permanently incorporated into the project shall be company certified via signature and submission of the statement of charges (TC69-008) form. In some circumstances, a waiver of the Buy America requirements may be granted by the FHWA, to be determined on a project-by-project basis.
13. A copy of this Agreement and all related documents making up the Authorization shall be given to the Company and shall be always made readily available for review at the work site.
14. Perpetual maintenance of Authorized encroachment is the responsibility of the Company, its successors, and assigns, with the approval of the Cabinet as required, unless otherwise stated.
15. The Company, its successors and assigns, shall comply with and **agree** to be bound by the requirements and terms of (a) this Agreement and all related documents making up the approved Authorization, (b) by the Cabinet's Permits Manual, and (c) by the Manual on Uniform Traffic Control Devices, both manuals as revised to and In effect on the date of Issuance of the permit, all of which documents are made a part thereof by this reference. Compliance by the Company, its successors, and assigns, with subsequent revisions to applicable provisions of either manual or other policy of the Cabinet may be made a condition of allowing the Authorization to persist under the original permit.
16. The Company agrees that this and any encroachment may be ordered removed by the Cabinet at any time, and for any reason, upon thirty days’ written notice to the last known address of the Company or to the address at the location of the Authorized work. The Company agrees that the cost of removing and of restoring the associated right-of-way is the responsibility of the Company, its successors, and assigns.
17. The Company, its successors and assigns, agree that if the Cabinet determines that motor vehicular safety deficiencies develop as a result of the installation or use of the Authorized encroachment, the Company, its successors and assigns, shall provide and bear the expenses to adjust, relocate, or reconstruct the facilities, add signs, auxiliary lanes, or other corrective measures reasonably deemed necessary by the Cabinet within a reasonable time after receipt of a written notice of such deficiency. The period within which such adjustments, relocations, additions, modifications, or other corrective measures must be completed will be specified in the notice.
18. This Authorization, if approved, is subject to the agreement that it shall not Interfere with any similar rights or permit(s) previously granted to any other party, except as otherwise provided by law.
19. The Company shall include documentation which describes the facilities to be constructed. The Company, its successors, and assigns, **agree** as a condition of the granting of the Authorization to construct and maintain any and all permitted facilities or other encroachments in strict accordance with the submitted and approved Agreement documentation and the policies and procedures of the Cabinet. The Company, its successors, and assigns, shall not use facilities authorized herein in any manner contrary to that prescribed by the Authorized relocation work. Only normal usage as contemplated by the parties and by this application and routine maintenance are authorized by the Authorization.
20. The Company, its successors and assigns, at all times from the date Authorized work is commenced until such time as all Authorized facilities or other encroachments are removed from the right-of-way and the right-of-way restored, shall **defend, protect, indemnify and save** harmless the Cabinet from any and all liability claims and demands arising out of the work, encroachment, maintenance, or other undertaking by the Company, Its successors and assigns, related or undertaken pursuant to the Authorization and original granted permit, due to any claimed act or omission by the Company, its servants, agents, employees, or contractors. This provision shall not inure to the benefit of any third party nor operate to enlarge any liability of the Cabinet beyond that existing at common law or otherwise if this right to Indemnity did not exist.
21. Upon a violation of any provision of the Authorization and original enacted Permit, or otherwise in its reasonable discretion, the Cabinet may require additional action by the Company, its successors, and assigns, up to and including the removal of the encroachment and restoration of the right-of-way. In the event additional actions required by the Cabinet under the Agreement are not undertaken as ordered and within a reasonable time, the Cabinet may in its discretion cause those or other additional corrective actions to be undertaken and the Cabinet shall recover the reasonable costs of those corrective actions from the Company, its successors, and assigns.
22. The Company, its successors, and assigns, shall use the encroachment premises in compliance with all requirements of federal law and regulation, including those imposed pursuant to Title Vl of the Civil Right Act of 1964 (42 U.S.C. § 2000d et seq.) and the related regulations of the U.S. Department of Transportation in Title 49 C.F.R. Part 21, all as amended.
23. The Company, its successors and assigns, agree that if the Cabinet determines it is necessary for the facilities or other authorized relocation by the Agreement to be removed, relocated or reconstructed in connection with the reconstruction, relocation or improvement of a highway, the Cabinet may revoke permission for the encroachment to remain Authorized and may order its removal, relocation or reconstruction by the Company, Its successors and assigns, **at expense of the Company**, except where the Cabinet is required by law to pay any or all of costs.
24. Work authorized by the Agreement within a highway construction project in the construction phase, it shall be the responsibility of the Company to make personal contact with the Department's Engineer on the project to coordinate all Authorized relocation work with the Cabinet's prime contractor on the project.
25. This Agreement ls not intended to, nor shall it, affect, alter, or alleviate any requirement imposed upon the Company, its successors, and assigns, by any other agency.
26. The Company, its successors and assigns, agree to contain and maintain all dirt, mud, and other debris emanating from the encroachment away from the surrounding right-of-way and the travel way of the highway hereafter and at all times that its obligations under the Agreement remain In effect.
27. Before You Dig, any excavation requires the excavator to contact KY 811 One-call system for information on the location of existing underground utilities in compliance with KRS 367.4901-4917. The contractor should be aware that the owners of underground facilities are not required to be members of the KY 811 One-Call Before U-Dig (BUD) service. The contractor must coordinate excavation with the utility owners, including those who do not subscribe to KY 811. It may be necessary for the contractor to contact the County Clerk to determine what utility companies have facilities in the area.
28. Execution of this Agreement and issuance of a cabinet Authorization number heron is conditioned upon the acceptance and agreement to the standard terms and conditions of the Cabinet Encroachment Permit (TC99-1) from revision in effect at the time of execution of this Agreement, the terms and conditions are made a part of this agreement by this reference.
29. The work of altering and maintaining the Company’s facilities covered by this Agreement, at any time after they have been relocated by the Company as herein provided, shall be done by the Company at its sole expense except as may otherwise be provided by law. Such work as is necessary to install, alter, service and maintain any facilities within the Cabinet’s right of way will be performed in accordance with policies and procedures prescribed by the Cabinet’s Permits Manual and in such a manner as will ensure the safety of the public in their use of the road as a highway. Access from the through-traffic roadways and ramps for maintenance or servicing of utility facilities located on the Cabinet’s right of way requires an encroachment permit except by permission of the District Engineer in an emergency.