

TEMPORARY ACCESS AGREEMENT
ANDERSON TOWNSHIP BOARD OF TRUSTEES
AND
OHIO DEPARTMENT OF TRANSPORTATION
HAM IR-275-38.82
PID 114356

This Temporary Access Agreement (“**Agreement**”), effective as of the last date of signature of either party shown below (“**Effective Date**”), is made by and between:

Board of Township Trustees of
Anderson Township, Hamilton County,
Ohio
7850 Five Mile Road
Cincinnati (Anderson Township), Ohio
45230

And

State of Ohio
Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

(“**ODOT**”)

(“**TOWNSHIP**”)

RECITALS:

- A. TOWNSHIP, a political subdivision of the State of Ohio, owns a certain .509 acre parcel of unimproved land in the vicinity of south of Interstate 275 limited access right of way, east of Birney Lane and north of Five Mile Road in Anderson Township, Hamilton County, Ohio, that is designed by Hamilton County Auditor Parcel Identification No. 5000330005500 (“**Fee Parcel**”).
- B. To remedy and repair a recent slip to and to prevent additional damage and impact to an eastbound lane of I-275 adjacent to the Fee Parcel, ODOT has planned and programmed a construction project to stabilize the slope of embankment beneath a portion of I-275 in Hamilton County including reconstruction of the travel lanes that have settled, constructing drilled shafts to stabilize the slope and armoring a portion of the Five Mile Creek to prevent continued erosion identified as HAM IR 275-38.82—PID 114356 (the “**Project**”).
- C. Because of the need to expedite the Project work and due to the topography of the area around the Interstate Right of Way, ODOT finds it necessary and appropriate to cross over a portion of the Township’s Fee Parcel to bring vehicles, equipment, materials and personnel to the work area of the Project.
- D. ODOT desires to obtain the right to access and use that portion of the Fee Parcel that is depicted on Exhibit A, being a strip of land approximately twenty feet in width extending from Birney Lane northeast to the I-275 right of way line, situated northwest of the Five Mile Creek (the “**Subject Property**”), in order to construct a temporary access drive to the Project area as shown on Exhibit B.

- E. The Township is agreeable to allowing such use of the Subject Property upon the terms and conditions stated in this Agreement.
- F. The Township and ODOT are sometimes referred to herein individually as a “**Party**” or collectively as “**Parties**”. The term “**Permittees**” when used herein means the respective Parties’ employees, agents, customers, business visitors, business guests, licensees and invitees, including but not limited to ODOT’s Project construction contractor and all subcontractors, and any other person or entity acting for or on behalf of ODOT.

NOW, THEREFORE, in consideration of the Recitals and the mutual promises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Township, the Parties agree as follows:

1. Term. This Agreement shall commence upon the Effective Date and, unless extended by written agreement of the Parties, shall end on December 31, 2025.
2. Grant of rights of access.
 - A. Effective upon the Effective Date, the Township does hereby grant for the benefit of ODOT and its Permittees the rights:
 - To access the Project area on and over the Subject Property depicted on Exhibit A
 - To remove vegetation and grade the ground level to construct the temporary access drive or road with gravel surface
 - To travel over such drive with vehicles and to bring equipment, materials and personnel to the Project area in order to construct the within described Project work
 - To maintain such access drive during the term of this Agreement
 - Upon completion of the Project, to remove the access drive by removing the gravel, regrading the ground and seeding the disturbed area to restore the Subject Property to as near the condition as it was in prior to entry under this Agreement, without, however, restoration or replacement of any trees, shrubs or vegetation other than grasses that were removed for the access drive. This Agreement shall not be deemed a lease, license or easement and the parties acknowledge and agree that this Agreement is not intended to grant ODOT an interest in the Subject Property or the underlying Fee Parcel.
 - B. For purposes of this Agreement, ODOT accepts the Subject Property in its “AS IS” condition as of the Effectives Date with no warranties, express or implied, made by the Township.
 - C. ODOT’s performance of the Project as well as its use of the Subject Property for access to its Project work area shall be ODOT’s sole responsibility working with its Project construction contractor and its subcontractors; subject, however, to the contractual provisions of Sections 107.10, 107.12 and 107.13 of ODOT’s

Construction and Materials Specifications ("ODOT's CMS") as incorporated into the Project construction contract as awarded; and the Township shall not be responsible for the safety of ODOT or its Permittees or for the condition or loss of any items of personal property brought onto the Fee Parcel, except for any intentional or grossly negligent acts of the Township.

3. Exercise of Rights by ODOT. In the exercise of ODOT's rights under this Agreement, ODOT shall:

- (i) be responsible for the payment of any and all costs and expenses incurred in connection with the Project and its I-275 Project;
- (ii) cause the Subject Property to be utilized (and cause Permittees to utilize the Subject Property) in a careful, safe and proper manner and in accordance with any and all laws, ordinances, rules or regulations of governmental authorities having jurisdiction over the Fee Parcel, subject to the above-mentioned sections of ODOT's CMS;
- (iii) be fully responsible for any part of the Project work performed by Permittees, subject to or as limited by Sections 107.01, 107.10 and 107.12 of ODOT's CMS and Ohio Revised Code Section 5525.16(C)(1);
- (iv) maintain and repair any portions of the Subject Property which may be adversely affected by ODOT's use thereof to the extent of any adverse impact;
- (v) comply in all respects with governmental authorities applicable to the generation, entry, handling, treatment, storage, use, transportation, presence and/or release into or onto the Subject Property, any other portion of the Fee Parcel or any adjacent properties (whether legal or illegal, accidental or intentional) of any hazardous or toxic substances, waste or other materials as defined by governmental authorities having jurisdiction over the Property, subject to and consistent with Sections 107.01, 107.11 and 105.16 of ODOT's CMS ; and
- (vi) require that its Project contractor install temporary fencing along both sides of the Subject Property to restrict construction and use of an access drive to the within described twenty (20) foot wide strip, unless that Subject Property area is modified by written agreement of the Parties.
- (vii) restrict its Project contractor and others working with that contractor from using the Subject Property for use as a "lay down area" for equipment or material storage.

4. Liens. Any claim for liens in connection with the Project Work and for the development and use of the access drive is controlled by and subject to Ohio Revised Code Sections 1311.25 to 1311.32.

5. Liability of the Parties. Neither Party shall be required to indemnify and save harmless one another from and against any and all loss, damage, liens, expense, claims, demands, actions or causes of action of whatever kind or nature which arise by reason of the rights granted herein or the exercise of such rights or by the failure of either Party to properly and timely perform its agreements and obligations hereunder.

As an agency of the State of Ohio, ODOT is self-insured and its liability may only be determined under Chapter 2743 of the Ohio Revised Code. ODOT shall, however, require the Project construction contractor to comply with Section 107.12 of ODOT's CMS regarding maintaining for the duration of the Project, including the Term of this Agreement, commercial general liability insurance (or its equivalent) against claims on account of death, bodily injury or property damage that may arise from or be occasioned during the Project in the amounts of coverage provided therein. Such insurance shall name Board of Township Trustees of Anderson Township, Hamilton County, Ohio as an additional insured thereunder. Moreover, for purposes of that Section, this Agreement shall be deemed to be the equivalent of, or an agreed substitution for, a Temporary Easement such that the obligation to indemnify required under Section 107.12 of ODOT's CMS shall extend to the Township as the fee owner of the Fee Parcel and Subject Property. The Parties understand that the Township is not a third party beneficiary under the Project construction contract or the CMS.

6. General Provisions

- A. Notices. All notices, elections, consents, demands and communications shall be in writing and shall be (i) personally delivered; (ii) sent by overnight mail or delivery (FedEx or another commercially recognized overnight carrier that provides receipts for all deliveries); or (iii) sent and delivered by facsimile or e-mail, followed by a hard copy sent by overnight carrier (unless such secondary delivery requirement is affirmatively waived in writing in each instance by the noticed party); and each notice shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which notice in accordance with this provision was given shall be deemed to constitute receipt of the notice, demand, request or communication sent. Copies of notices shall be sent to the Attorneys for the respective Parties, if identified on the signature page. Either Party may, by written notice to the other, change the address to which notices are to be sent.

Notices as to Anderson Township:

Board of Township Trustees of Anderson Township
Attn: Vicky L. Earhart, Township Administrator
7850 Five Mile Road
Cincinnati, Ohio 45230

Cc: Steve E. Sievers
Assistant Township Administrator

Notices as to ODOT:

Ohio Department of Transportation
Casey Carriere, Project Manager
District 8
505 S. State Route 741
Lebanon, OH 45036

Cc: Charles Rowe
District 8 Design Engineer

Cc: Matthew Couch
District 8 Real Estate Administrator

- B. Captions. Captions in this Agreement are inserted for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or any of the terms hereof.
- C. Entire Agreement. This Agreement, together with the attached Exhibits, contains all of the terms and conditions of the Agreement between the Parties, and supercedes any and all prior and contemporaneous oral and written agreements. The Exhibits attached to this Agreement are hereby incorporated by reference in their entirety with the same force and effect as if they were set forth at length in this Agreement.
- D. Modifications and Waivers. This Agreement cannot be changed nor can any provision of this Agreement, or any right or remedy of any Party, be waived except in a writing signed by the Parties. Any waiver of any provision of this Agreement, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.
- E. Severability. If one or more of the provisions of this Agreement or the application thereof shall be determined illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions or any other application thereof shall in no way be affected or impaired.
- F. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio.
- G. Interpretation. The Parties acknowledge each to the other that both they and their counsel have reviewed and revised this Agreement as each determined appropriate and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or Exhibits hereto.
- H. Benefit of Agreement. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

- I. No Joint Venture. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the Parties hereto partners or joint ventures, or to render either Party liable for any of the debts or obligations of the other.
- J. No Third-Party Beneficiary. The provisions of this Agreement are and will be for the benefit of the Parties only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement.
- K. Any person executing this Agreement in a representative capacity warrants that he or she is duly authorized by his or her principle to sign in a representative capacity.
- L. Counterparts. This Agreement may be executed in multiple counterparts and shall be effective when such counterparts are executed by and delivered to all signatory Parties. Such counterparts shall be taken to be one and the same original document with the same effect as if all Parties hereto had signed the same document. Any executed signature page of this Agreement (together with any separate acknowledgment page) may be detached from any counterpart and attached to another counterpart containing the signature pages (and any acknowledgment pages) with the signatures (and acknowledgments) of the other signatory Party to this Agreement.
- M. Electronic Execution. For purposes of executing this Agreement, a document signed and transmitted by facsimile machine or other electronic transmission shall be treated as an original document. The signature of any Party thereon shall be considered an original signature and the document transmitted shall be considered to have the binding legal effect as if it were originally signed.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands at places and dates indicated.

Board of Township Trustees of Anderson Township,
Hamilton County, Ohio


By: 

Vicky L. Earhart

Anderson Township Administrator

Date and place of signing: May 5, 2025, Anderson Center
7850 Two Mile Rd

Reviewed:



Margaret W. Comey
Anderson Township Law Director

Date: _____

SIGNATURES CONTINUED ON THE FOLLOWING PAGE

STATE OF OHIO,
DEPARTMENT OF TRANSPORTATION

By: Pamela Boratyn / DAG
Pamela Boratyn, Director
By: Douglas A. Gruver, P.E.

Date and place of signing: 06 May 2025 ODOT District 8 Office
505 S. State Route 741
Lebanon, OH 45036

**For Use by ODOT Office of
Chief Legal Counsel Only:**

Richard J. Hecker

Date reviewed: 05/05/2025

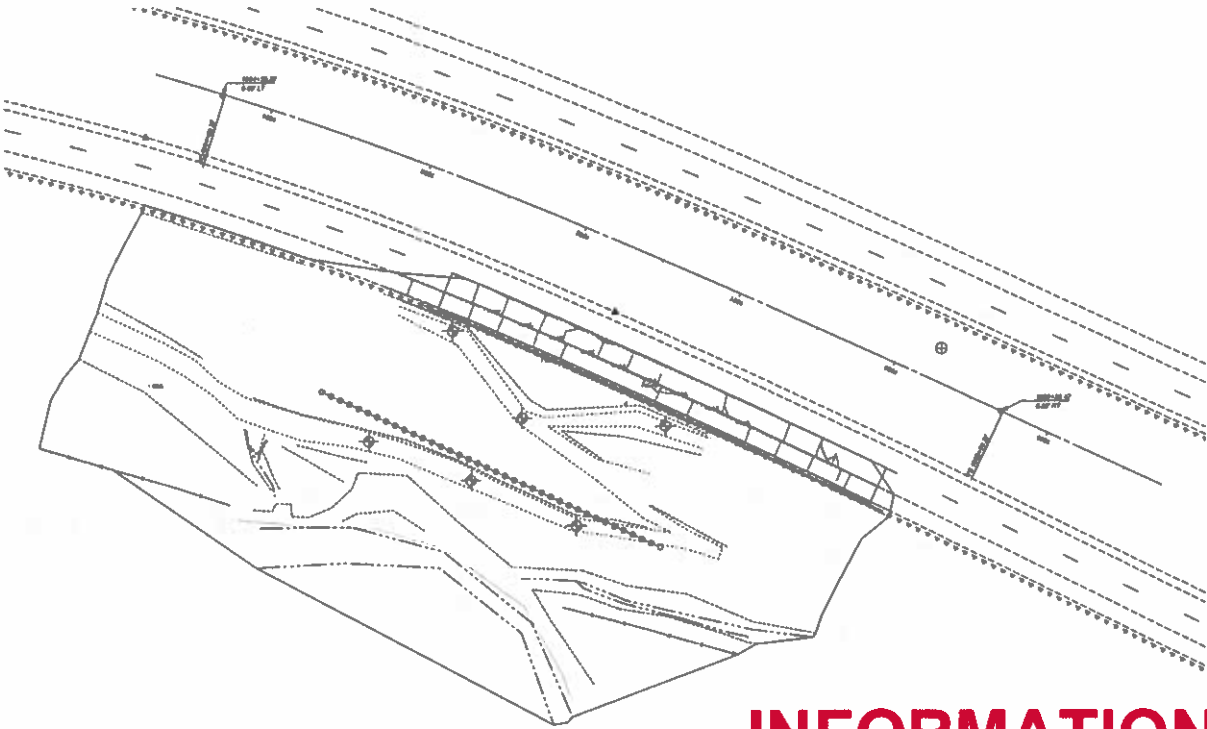
EXHIBIT A

DEPICTION OF THE “SUBJECT PROPERTY” AND THE “FEE PARCEL”



EXHIBIT B

DEPICTION OF THE "PROJECT" AREA



**INFORMATION
ONLY**

