

RELEASE OF LIABILITY FOR USE OF *ELECTRONIC DESIGN FILES*

Contractor: _____

Description of Project: _____ **Contract ID:** _____

Project No.: _____

The Contractor has requested that the West Virginia Department of Transportation, Division of Highways (hereinafter "WVDOH") provide electronic design files for the Contractor's use and convenience. The WVDOH will provide the requested files, subject to the Contractor's acceptance of the terms and conditions below.

Any electronic files transmitted to the Contractor shall remain the property of the WVDOH, and in no case shall the transfer of the electronic files be considered a sale or other transfer of ownership rights. The files are to be used solely to facilitate construction and construction documentation for the above referenced project and are not to be copied or reused for other projects. These files are provided only for the convenience of the Contractor and others providing services to the WVDOH and are not to be considered Contract Documents.

Contractor accepts electronic files for drawings and specifications "as is." In case of any differences between the electronic files and the Contract Documents, the official Contract Documents govern. Contractor's use of the electronic documents shall not in any way obviate Contractor's responsibility to comply with and meet the criteria set forth in the written plans or other contract documents.

The WVDOH expressly disclaims all representations or warranties in connection with the electronic files, including, but not limited to, the compatibility of the electronic files with any hardware or software used by the Contractor, or from the modification of the electronic files into another format.

The WVDOH expressly disclaims all representations or warranties regarding the accuracy, title, non-infringement or completeness of these electronic files, nor of their merchantability or fitness for a particular purpose. The Contractor acknowledges that it has not relied upon any other representation or warranty other than those expressly set forth herein in signing this Release of Liability. Any use of the information obtained or derived from these electronic files will be at Contractor's sole risk and without liability, risk or legal exposure to WVDOH.

To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless the WVDOH, its officers, agents and employees (hereinafter "Division Indemnified Person"), and shall reimburse the Division's Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage,

cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against the Division's Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of the Contractor, or any recipient of the electronic files from Contractor, use of the electronic files provided by WVDOT under this Agreement, whether caused either wholly or in part by the negligent acts or omissions of Contractor, any recipient of the electronic files from Contractor or anyone directly or indirectly employed by Contractor or for anyone for whose acts Contractor may be liable, except for any liability or damages due to the willful or intentional unlawful acts or the negligence of the Division or its employees.

Upon written request by any Division Indemnified Party, Contractor shall defend the same (if requested by any Division Indemnified Person, in the name of the Division Indemnified Person) by attorneys and other professionals approved by the Division Indemnified Parties. Notwithstanding the foregoing, any Division Indemnified Persons may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Division Indemnified Persons, their attorneys shall control the resolution of any claim or proceeding, provided that no compromise or settlement shall be entered without Contractor's consent, which consent shall not be unreasonably withheld. Upon written demand, Contractor shall pay or, in the sole and absolute discretion of the Division Indemnified Persons, reimburse, the Division Indemnified Persons for the payment of reasonable fees and disbursements of attorneys, accountants and other professional advisors in connection therewith.

The subject files may be considered sensitive information and should be transmitted only to those with specific use in support of the above-mentioned Project. The Contractor and all subsequent users agree to limit file distribution. The Contractor shall not provide the files to any other subsequent user without the written approval of the WVDOT. Any other subsequent user is required to sign a Release of Liability for Use of electronic design files, before the files may be transferred by Contractor.

ON BEHALF OF _____, I CERTIFY THAT I HAVE READ AND ACCEPT THE ABOVE TERMS AND CONDITION, AND HAVE THE AUTHORITY TO EXECUTE THIS RELEASE OF LIABILITY.

Signed: _____

Printed Name: _____

Title: _____

Date: _____