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RESOLUTION NO. 2018 August-1

WHEREAS, the Commonwealth of Pennsylvania, acting through the Department of Transportation, has agreed to transfer to the Borough of Lilly all its right, title and interest in and to the sidewalk system to be installed on Portage Street (PA 53) included in the Lilly Bear Rock Culvert Rehabilitation project, in the Borough of Lilly, Cambria County, Pennsylvania, in accordance with the terms, conditions and covenants of the attached Agreement; and,

WHEREAS, the Borough of Lilly, Cambria County, desires to approve the Agreement.

NOW, THEREFORE, BE IT RESOLVED, AND IT IS HEREBY RESOLVED, by authority of the Lilly Borough Council, Cambria County, that the Agreement is hereby approved and William Patterson, President is hereby authorized and directed

(Print Official Name & Title)

to execute the attached Agreement on its behalf and that Claudine Falger, Secretary/Treasurer

(Print Official Name & Title)

Adopted and approved at a regular meeting of the Lilly Borough Council, Cambria County, this 1st day of August, 2018.

ATTEST:

Lilly Borough
(Name of Municipality)

Claudine Falger
Signature and Official Title
Secretary/Treasurer

Bill Patterson
Signature and Official Title
President

I, William Patterson, President of the
(Print Name) (Print Official Title)

Lilly Borough Council, do hereby certify that the foregoing is a true and correct copy of the Resolution adopted at a regular meeting of the Lilly Borough Council held on the 1st day of August, 2018.

DATE: 8-1-2018

Bill Patterson
Signature and Official Title
President

Effective Date: _____
(PennDOT will insert)

County(ies):	<u>Cambria</u>	Agreement #:	<u>097178</u>
Project Short Title:	<u>PA 53 Lilly Bear Rock Clvt</u>	MPMS #:	<u>74358</u>
Project (SR & Sec):	<u>SR 0056 Section 27B</u>	Federal ID #:	<u>25-1184931</u>

SIDEWALK MAINTENANCE AGREEMENT

This Sidewalk Maintenance Agreement (“Agreement”) is made by and between the Commonwealth of Pennsylvania (“Commonwealth”), acting through the Department of Transportation (“PennDOT”)

and

Borough of Lilly, of the Commonwealth of Pennsylvania, (“Municipality”).

BACKGROUND

PennDOT is authorized to cooperate with political subdivisions of the Commonwealth in the coordination of plans and policies for the development of ground facilities, and is authorized to enter into all necessary contacts and agreements with political subdivisions of the Commonwealth pursuant to Sections 2002(a)(7) and 2001.1 of the Administrative Code of 1929, as amended, 71 P.S. §§512(a)(7) and 511.1.

PennDOT and the Municipality recognize that new construction must be accessible and usable by persons with disabilities; that alterations to existing facilities, within the scope or limits of a project, must provide usability by persons with disabilities to the maximum extent feasible; that existing facilities that have not been altered must not deny access to persons with disabilities; and, that all alteration type projects such as reconstruction, milling, resurfacing, must assess pedestrian needs and improve or upgrade altered existing facilities to the latest ADA standards.

The parties, intending to be legally bound, agree as follows:

1. **Project Location.** PennDOT shall design and construct a project involving improvements at the locations shown below (“Project”). PennDOT has determined sidewalk is appropriate as part of the Project:

County	State Route	Beginning Segment/Offset	Ending Segment/Offset
Cambria	0053	0230/2421 LT	0230/2502 LT
Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.	Click or tap here to enter text.

2. **Construction Plan.** PennDOT shall, with its own forces or by contract, install sidewalk in accordance with plans prepared by PennDOT. Such plans and installation shall comply with the Americans with Disabilities Act (“ADA”), as amended, and its related regulations, and in accordance the guidance set forth in PennDOT Publication 13M, Chapter 6, unless it is structurally impracticable to meet the requirements of the ADA and its related regulations, or there are insurmountable site or technical infeasibilities involved in the design or construction of the pedestrian facilities. Where existing such constraints limit the ability to fully meet the latest ADA standards, the improvements or upgrades must be done to provide access to the maximum extent feasible.
3. **Notice of Completion.** Upon completion of the Project by PennDOT or its contractors, PennDOT will send to the Municipality a written notice of completion.
4. **Maintenance.**
 - a. **Scope.** All references to sidewalk in this Agreement shall include curb ramps and blended transitions included as part of the Project.
 - b. **Municipality to Maintain Sidewalk.** Upon receipt of the written notice of completion the Municipality shall, at its sole cost and expense, provide for year-round maintenance of the sidewalk(s).
 - c. **Level of Service.** Sidewalk shall remain in operable working condition. The Municipality shall maintain those features of facilities and equipment required to be readily accessible to

and usable by persons with disabilities in accordance with 28 CFR § 35.133. The Municipality shall adopt standards and practices ensuring the Municipality's day-to-day operations to keep the pedestrian path of travel open and usable for all persons, including those with disabilities, throughout the year (including snow and debris removal, and maintenance of accessible pedestrian walkways in work zones).

- d. **Service Interruptions.** While isolated or temporary interruptions in service or access due to maintenance or repairs may be allowed, the Municipality shall ensure reasonable alternative pedestrian access accommodations for long-term disruptions.
- e. **Municipal Sidewalk Ordinances.** The Municipality, by ordinance, may provide its sidewalk maintenance responsibilities under this Agreement shall be performed by adjacent property owners.
- f. ***This provision is only applicable if the following box is checked:*** ☐ **Retaining Walls.**

PennDOT shall be responsible for structural maintenance of retaining walls supporting the travelled portion of the state highway available to motor vehicles, and the Municipality shall be responsible for structural maintenance of retaining walls exclusively supporting or whose sole purpose is to support curbing, footways, and sidewalk. The Municipality, to the extent provide for by law, may provide this maintenance responsibility shall be performed by adjacent property owners.

- g. ***This provision is only applicable if the following box is checked:*** ☐ **Sidewalks on Bridge.**

PennDOT shall maintain the structural integrity and substructure of the pedestrian facilities to ensure structural integrity of the sidewalk. The Municipality shall remove snow and debris from the sidewalk to ensure the path of travel on pedestrian facilities on the bridge is open and usable for all persons throughout the year. PennDOT and the Municipality shall also maintain accessible pedestrian walkways on bridges in their respective work zones and correct other disruptions each party may cause to such pedestrian walkways with only isolated or temporary disruptions in accessibility. Reasonable alternative pedestrian access accommodations shall be made for long-term disruptions. The Municipality, by ordinance, may provide its sidewalk maintenance responsibilities under this Agreement be performed by abutting property owners.

5. **Term and Termination.**

- a. **Term.** This Agreement shall continue in full force and effect indefinitely, unless terminated as provided in this Agreement. The effective date of this Agreement shall be the date this Agreement is fully executed by the Municipality and PennDOT and all approvals required by Commonwealth contracting procedures have been obtained, as indicated by the date of the last Commonwealth signature. Following full execution, PennDOT shall insert the effective date at the top of Page 1.
 - b. **Termination for Convenience of Non-Appropriation.** The parties may cancel or terminate this Agreement for convenience or non-appropriation until the date the Project is awarded, but not after that date. Each party shall bear the costs it incurred during the time this Agreement was in effect.
 - c. **Termination for Cause.** This Agreement shall not terminate for cause unless the cause renders it void or otherwise unenforceable. If one party alleges an event of default has occurred resulting in termination, and the other party disputes whether a breach has occurred, then this Agreement shall not terminate until and unless the dispute is resolved and this Agreement is determined to be void or otherwise unenforceable.
 - d. **Accrued Rights and Obligations.** Termination of this Agreement for any reason shall not release either party from any liability which, at the time of termination, has already accrued to the other party or which is attributable to a period prior to termination, nor preclude either party from pursuing any rights and remedies it may have with respect to any breach of this Agreement.
6. **Liquid Fuels Funds.** If the Municipality fails to perform the terms, conditions, or provisions of this Agreement, PennDOT may withhold the Municipality's Liquid Fuels Tax Fund Allocation to complete necessary work and reimburse PennDOT for the costs due.
7. **Notification of Required Action.** If PennDOT determines repair, maintenance, or other required action is necessary with respect to the sidewalk, PennDOT shall notify the Municipality in writing. The Municipality shall begin necessary work within five calendar days of receipt of PennDOT's notice. The Municipality or its contractor shall provide safeguards to protect the

safety of the traveling public during the work (including work zone traffic control in accordance with PennDOT regulations and publications). The Municipality shall be responsible for promptly completing the necessary work, even if the general maintenance responsibility for the sidewalk has been delegated to adjacent property owners or other parties; however, if a municipal ordinance makes the adjacent property owners financially responsible for the cost of the work, nothing shall prevent the Municipality from seeking reimbursement from them. If the Municipality fails to commence necessary work within this five-day period or fails to prosecute the work diligently to completion, PennDOT may perform the repair, maintenance, or other necessary action at the Municipality's sole cost and expense.

8. **Failure to Make Payment.** Failure by the Municipality to pay PennDOT within 45 days of receipt of an invoice for work performed by PennDOT shall constitute a default. Payment shall be deemed made as follows, according to the manner chosen:

- a. If made in person, when tendered;
- b. If made by electronic transfer, as provided by state and federal banking laws and regulations;
- c. If made by U.S. First Class Mail, postage prepaid, when posted; or
- d. If made by overnight delivery service having positive tracking, when picked up.

9. **Responsibility for Liability.** PennDOT shall pay for loss, liability or expense, which arises out of or relates to PennDOT's acts or omissions with respect to its obligations under this Agreement, where a final determination of liability on the part of PennDOT is established by a court of law or where settlement has been agreed to by PennDOT. This provision shall not be construed to limit PennDOT's rights, claims or defenses which arise as a matter of law or pursuant to this Agreement. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or PennDOT. The Municipality shall pay for loss, liability or expense, which arises out of or relates to the Municipality's acts or omissions with respect to its obligations under this Agreement, where a final determination of liability on the part of the Municipality is established by a court of law or where settlement has been agreed to by the Municipality. This provision shall not be construed to limit the Municipality's rights, claims or defenses which arise as a matter of law or pursuant to this Agreement. This provision shall not be construed to limit immunity or defense of the Municipality (including those under the Political Subdivision Tort Claims Act, 42 Pa.C.S. §§ 8541-8564).

10. **Resolutions and Ordinances.** The Municipality shall pass ordinances or resolutions as may be necessary to accomplish the purposes of this Agreement.
11. **Notice.** Notices and reports arising out of, or from, this Agreement shall be in writing and given to the parties at the address provided under this Agreement, either by regular mail, e-mail, or delivery in person. Except for payments made in accordance with this Agreement, notice shall be deemed given when received.

If to PennDOT:
PennDOT District 9-0
Name
1620 North Juniata Street
Street
Hollidaysburg
City
PA 16648
State Zip
814-696-6834
Telephone
814-696-7149
Fax
jurbas@pa.gov
Email Address

If to Municipality:

Lilly Borough
Name
421 Main Street
Street
Lilly
City
PA 15938
State Zip
814-886-7227
Telephone
814-886-3918
Fax
lillyborough@comcast.net
Email Address

A party may change its contact information by providing written notice to the other party.

12. **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.
13. **Titles Not Controlling.** The titles of sections are for reference only, and shall not be used to construe the language in this Agreement.
14. **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 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.
15. **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.
16. **Independence of the Parties.** Nothing contained in this Agreement is intended or shall be construed to, in any respect, create or establish the relationship of partners between the Municipality and PennDOT, or as constituting PennDOT as the representative or general agent of the Municipality for any purpose whatsoever.
17. **Assignment.** This Agreement may not be assigned by the Municipality, either in whole or in part, without the written consent of PennDOT. This provision shall not apply to the transfer of maintenance responsibilities or obligations by the Municipality pursuant to an ordinance as provided for above.
18. **No Third-party Beneficiary Rights.** This Agreement does not create or intend to confer any rights in or on persons or entities not a party to this Agreement.
19. **Force Majeure.** Neither party shall be liable for failure to perform under this Agreement if failure to perform arises out of causes beyond the control and without the fault or negligence of

- the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions or freight embargoes. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
20. **Integration and Merger.** This Agreement and, if applicable, any attachments or exhibits when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the parties containing the terms and conditions agreed on by the parties. 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. No conditions precedent to the performance of this Agreement exist, except as expressly set forth in this Agreement.

[The remainder of this page is left blank intentionally.]

The parties have executed this Agreement to be effective as of the date of the last signature affixed below.

Attest:

Municipality

BY Candice Polyer 8-1-2018
Title: Secretary/Treasurer Date

BY Bill Elton 8-1-18
Title: President Date

Please attach a resolution providing proof of signature authority for the signer to sign on behalf of the Municipality, Authority or other governmental entity. Signers need to indicate titles and date signatures.

DO NOT WRITE BELOW THIS LINE--FOR DEPARTMENT USE ONLY

APPROVED AS TO LEGALITY
AND FORM

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY _____
for Chief Counsel Date

BY _____
Deputy Secretary or designee Date

BY _____
Deputy General Counsel Date

BY _____
Deputy Attorney General Date