

INSTRUCTIONS FOR COMPLETING THIS AGREEMENT

1. Federal ID No. field: Enter the Organization's federal identification number in this field.
Example: 123456789

Form BPR-1 (04 01)
Consultant Agreement Division



Agreement No: _____
Federal ID No.: _____
User ID Code: _____

AGREEMENT TO AUTHORIZE ELECTRONIC ACCESS TO PENNDOT SYSTEMS

2. Name of Business field: Enter the Organization's legal name in this field.
Example: Business Corporation

THIS AGREEMENT, made and entered into this _____ day of _____, _____
by and between the Commonwealth of Pennsylvania, acting through the Bureau of Design of the Department of
Transportation, hereinafter referred to as DEPARTMENT,

AND

3. Registered or Principal Office Legal Address of Business field: Enter the Organization's full legal address primarily responsible for doing business in Pennsylvania in this field.
*Example: 123 Main Street,
Anytown, PA 17055*

(NAME OF APPLICANT)

(REGISTERED OR PRINCIPAL OFFICE LEGAL ADDRESS OF APPLICANT)

(PRINCIPAL OFFICE PHONE NUMBER)

hereinafter referred to as APPLICANT.

WHEREAS, the APPLICANT desires to register as a DEPARTMENT business partner to be permitted electronic access to the following DEPARTMENT systems:

_____ (hereinafter referred to as "System" (either singular or plural) for the purposes of entering information into and exchanging data with the System) and

WHEREAS, the DEPARTMENT, in furtherance of the powers and duties conferred on it by Section 2002 of the Administrative Code of 1929, as amended, 71 P.S. Section 512, to design and construct state highways and other transportation facilities and to enter into contracts for this purpose, is willing to permit the APPLICANT to electronically submit technical proposals, invoices, engineering plans, designs and other documents necessary to design and construct transportation projects as part of the DEPARTMENT'S program to use the System.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises expressed in this document, and intending to be legally bound, the parties agree as follows:

1. The APPLICANT is responsible for furnishing and assuming the total costs of all software and hardware necessary to connect to the System. Such software shall include an operating system, an Internet browser and any software needed to operate a modem. The APPLICANT is responsible for the procurement and cost of any data communications lines required to connect to the System. The APPLICANT is responsible for the cost of telephone lines and usage.

4. Principal Office Phone Number field: Enter the Organization's main office phone number in this field.
Example: 717-555-1212

5. Department systems field: Enter a system name:
Engineering and Construction Management System, Multi-Modal Project Management System or Rail Freight Ports & Waterways System

Page 1 of Four Pages

Please Do Not Return These Instruction Pages With the Agreement

INSTRUCTIONS FOR COMPLETING THIS AGREEMENT

6. Print Business Name field: Enter the Organization's legal name in this field.
Example: Business Corporation

7. Attest Signature field: Signature of the person witnessing the signatory signature.
Example: Jane Smith

8. Attest Date field: Enter the date the agreement was signed by the attest.
Example: 6/20/2000

9. Attest Print Name field: Print the name of the Attest.
Example: Jane Smith

10. Attest Title field: Enter the title of the Attest authorized by law to attest.
Example: Corporate Secretary

ATTEST:

(Print BUSINESS Name)

(Signature) _____
(Date)

Print Name

(Title)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY: _____
(DEPARTMENT Signatory and Date)

APPROVED AS TO LEGALITY AND FORM

BY: _____
Chief Counsel DATE

Preapproved form:
OGC No. 18-16-2-831
App'd OAG: 18/15/2002

MAIL COMPLETED AGREEMENT TO:
System Registration
PA Department of Transportation
Bureau of Design, ECMD
P.O. Box 3662
Harrisburg, PA 17105-3662

BY:

(Signature) _____
(Date)

Print Name

(Title)

RECORDED NO. _____
CERTIFIED FUNDS AVAILABLE UNDER
ACTIVITY PROGRAM _____
SYMBOL _____
AMOUNT _____

BY _____
Comptroller DATE

11. Signatory Signature field: Signature of the person authorized to bind an agreement.
Example: Joe Smith

12. Signatory Date field: Enter the date the agreement was signed by the Signatory.
Example: 6/20/2000

13. Signatory Print Name field: Print the Name of the Signatory.
Example: Joe Smith

14. Signatory Title field: Enter the title of the Signatory.
Example: President

Please Do Not Return These Instruction Pages With the Agreement



Agreement No: _____
Federal ID No.: _____
User ID Code: _____

AGREEMENT TO AUTHORIZE
ELECTRONIC ACCESS TO PENNDOT SYSTEMS

THIS AGREEMENT, made and entered into this day of _____, _____,
by and between the Commonwealth of Pennsylvania, acting through the Bureau of Design of the Department
of Transportation, hereinafter referred to as DEPARTMENT,

AND

(NAME OF BUSINESS)

(REGISTERED OR PRINCIPAL OFFICE LEGAL ADDRESS OF BUSINESS)

(PRINCIPAL OFFICE PHONE NUMBER)

hereinafter referred to as APPLICANT.

WHEREAS, the APPLICANT desires to register as a DEPARTMENT business partner to be permitted
electronic access to the following DEPARTMENT systems:

(hereinafter referred to as "System" whether singular or plural) for the purposes of entering information into
and exchanging data with the System; and

WHEREAS, the DEPARTMENT, in furtherance of the powers and duties conferred on it by Section 2002 of
the Administrative Code of 1929, as amended, 71 P.S. Section 512, to design and construct state highways and
other transportation facilities and to enter into contracts for this purpose, is willing to permit the APPLICANT
to electronically submit technical proposals, invoices, engineering plans, designs and other documents
necessary to design and construct transportation projects as part of the DEPARTMENT'S program to use the
System.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises expressed in this
document, and intending to be legally bound, the parties agree as follows:

1. The APPLICANT is responsible for furnishing and assuming the total costs of all software and
hardware necessary to connect to the System. Such software shall include an operating system, an Internet
browser and any software needed to operate a modem. The APPLICANT is responsible for the
procurement and cost of any data communications lines required to connect to the System. The
APPLICANT is responsible for the cost of telephone lines and usage.

2. The DEPARTMENT grants APPLICANT access to the System under the terms and conditions of this Agreement and the APPLICANT will be permitted access to the System as the DEPARTMENT shall direct. The APPLICANT agrees to be liable for any damage to the DEPARTMENT'S databases or software owned or licensed by the DEPARTMENT in the event a computer virus originated from the APPLICANT, its agents or employees to the extent that such computer virus was introduced on the DEPARTMENT'S computer systems or networks as a result of APPLICANT'S negligence and APPLICANT has not used reasonable care to detect and eliminate computer viruses using then current industry standard security and anti-virus tools. For purposes of the Agreement, the term "computer virus" shall mean and include any undocumented or hidden functionality or performance capability contained in software or data which is designed to facilitate the theft of, destroy or corrupt data or software, or disable or lock software or a computer system, or any undocumented and unauthorized method for gaining access electronically to software or other corporate resources or data.

3. The DEPARTMENT cannot waive sovereign immunity and will not be liable for any damage to the APPLICANT'S databases or software owned, leased or licensed by the APPLICANT from any source, whatsoever, within or outside the DEPARTMENT.

4. The APPLICANT will implement appropriate security measures to insure that only authorized employees of the APPLICANT will have access to and enter data into the System. The APPLICANT agrees to assign only its current employees User Identification Internet System access codes ("User ID codes") provided to the APPLICANT by the DEPARTMENT. The APPLICANT agrees to assign a separate and distinct User ID code to each current employee who will submit invoices, letters of interest, technical proposals or other project documents or participate as a member of a project team under an engineering agreement or construction contract with the DEPARTMENT. The APPLICANT agrees to accept full responsibility for controlling the User ID codes that the APPLICANT assigns to the employees of the APPLICANT. The APPLICANT agrees to deactivate an employee's User ID code immediately upon the employee's separation and/or dismissal from the employ of or association with the APPLICANT. The APPLICANT agrees that the APPLICANT'S employees may not share User ID codes. The APPLICANT agrees to be liable for the items negligently submitted under one of its assigned User ID codes and for the negligent submissions, actions or omissions of anyone using a User ID code of the APPLICANT or the APPLICANT'S employee.

5. The DEPARTMENT shall make provisions for the APPLICANT to obtain initial training for the System. This training may not include any non-System program topics, nor may it include training on any other computer hardware or software, including, but not limited to, operation of a personal computer.

6. The DEPARTMENT will make reasonable attempts (barring unforeseen interruptions due to calamity, natural disaster or technical impossibility) to make the System available for on-line access 24 hours per day, seven days per week, except for ten hours each workday when the System databases are updated. The DEPARTMENT will provide support only during the normal business hours of the DEPARTMENT offices.

7. The APPLICANT shall comply with the Contractor Integrity Provisions, dated December 20, 1991; the Provisions Concerning the Americans with Disabilities Act, dated January 16, 2001; the Contractor Responsibility Provisions, dated April 16, 1999; the Offset Provision, dated April 16, 1999; and the Nondiscrimination/Sexual Harassment Clause, dated June 30, 1999, all of which are incorporated into this Agreement by reference as though physically attached.

8. APPLICANT shall not be responsible for any consequential, indirect, special or punitive damages with respect to claims made under this Agreement. In any event, DEPARTMENT may not recover direct damages in excess of \$1,000,000.

9. This Agreement shall continue until terminated by either Party, at any time, without cause, within fifteen (15) days upon receipt of written notice thereof. Any material breach of this Agreement by either Party shall entitle the other Party to terminate this Agreement without prejudice to its rights or remedies available at law or in equity. Upon termination or expiration of this Agreement, APPLICANT shall cease and shall cause its users to cease attempts to access the System.

10. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

11. This Agreement embodies the entire understanding between the DEPARTMENT and APPLICANT and there are no contracts, agreements, or understanding with reference to the subject matter hereof which are not merged herein.

12. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101—3104, applies to this Contract/Agreement. Therefore, this Contract/Agreement is subject to, and the APPLICANT shall comply with, the clause entitled Contract Provisions – Right to Know Law 8-K-1532, attached as Exhibit “A” and made a part of this Contract/Agreement. As used in this Contract/Agreement, the term “Contractor” refers to the APPLICANT.

ATTEST:

(Signature) (Date)

Print Name

(Title)

(Print BUSINESS Name)

BY: _____
(Signature) (Date)

Print Name

(Title)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

BY: _____
(DEPARTMENT Signatory and Date)

APPROVED AS TO LEGALITY AND FORM

BY: _____
Chief Counsel DATE

RECORDED NO. _____
CERTIFIED FUNDS AVAILABLE UNDER
ACTIVITY PROGRAM _____
SYMBOL _____
AMOUNT _____

BY _____
Comptroller DATE

Preapproved form:
OGC No. 18-K-2831
Appv'd OAG 08/15/2002

MAIL COMPLETED AGREEMENT TO:
System Registration
PA Department of Transportation
Bureau of Design, ECMD
P.O. Box 3662
Harrisburg, PA 17105-3662

Contract Provisions – Right to Know Law 8-K-1532

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.

- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.
- i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.

***THE FOLLOWING ARE INCORPORATED BY REFERENCE INTO THE AGREEMENT.
THESE ARE ENCLOSED FOR YOUR INFORMATION ONLY.***

CONTRACTOR INTEGRITY PROVISIONS

- a. For purposes of this clause only, the words “confidential information,” “consent,” “contractor,” “financial interest,” and “gratuity” shall have the following definitions.
- 1) **Confidential information** means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
 - 2) **Consent** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
 - 3) **Contractor** means the individual or entity that has entered into the Contract with the Commonwealth, including directors, officers, partners, managers, key employees and owners of more than a five percent interest.
 - 4) **Financial interest** means:
 - a) Ownership of more than a five percent interest in any business; or
 - b) Holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
 - 5) **Gratuity** means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
- b. The Contractor shall maintain the highest standards of integrity in the performance of the Contract and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
- c. The Contractor shall not disclose to others any confidential information gained by virtue of the Contract.
- d. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly, or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.

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- e. The Contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
- f. Except with the consent of the Commonwealth, neither the Contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under the Contract except as provided therein.
- g. Except with the consent of the Commonwealth, the Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
- h. The Contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
- i. The Contractor, by execution of the Contract and by the submission of any bills or invoices for payment pursuant thereto, certifies, and represents that he or she has not violated any of these provisions.
- j. The Contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the Contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents or files of any type or form which refers to or concern the Contract. Such information shall be retained by the Contractor for a period of three years beyond the termination of the Contract unless otherwise provided by law.
- k. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another Contractor to complete performance hereunder, and debar and suspend the Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

(12/91)

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PROVISIONS CONCERNING *THE AMERICANS WITH DISABILITIES ACT*

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of *The Americans With Disabilities Act*, 28 C.F.R. § 35.101 et seq., The Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "*General Prohibitions Against Discrimination*," 28 C.F.R. § 35.130, and all other regulations promulgated under *Title II of The Americans With Disabilities Act* which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1.

Enclosure 1 to Management Directive 215.12 Amended (1/16/01)

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CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any government entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472

Management Directive 215.9 Amended
April 16, 1999

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OFFSET PROVISION

The contractor agrees that the Commonwealth may offset the amount of any state tax or Commonwealth liability of the contractor or its affiliates and subsidiaries that is owed to the Commonwealth against any payments due the contractor under this or any other contract with the Commonwealth.

Management Directive 215.9 Amended (April 16, 1999)

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NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

Each contract entered into by a governmental agency shall contain the following provisions by which the Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provision will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.

Management Directive 215.16 Amended (June 30, 1999)

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